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Follow-up on the recommendations of the Permanent Forum

Study on how the knowledge, history and contemporary social circumstances of indigenous peoples are embedded in the curricula of education systems

Note by the secretariat

Summary

Pursuant to a decision of the Permanent Forum on Indigenous Issues at its eleventh session (see E/2012/43, para. 105), the Permanent Forum appointed Myrna Cunningham and Álvaro Pop, members of the Forum, to conduct a study on how the knowledge, history and contemporary social circumstances of indigenous peoples are embedded in the curricula of education systems. That study is presented below at the twelfth session of the Permanent Forum.

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Study on how the knowledge, history and contemporary social circumstances of indigenous peoples are embedded in the curricula of education systems

I. Introduction

1. The initiatives and proposals of the indigenous peoples regarding education have addressed a number of areas: curricular reform, respect for endogenous teaching, the use of indigenous languages, teacher education and training, the preparation of culturally acceptable teaching aids, and other topics. However, the core demand has been for education that, at every level and in all its guises, serves to preserve, foster and develop their diverse cultures and is designed, implemented and executed by the indigenous peoples themselves. That position is in line with the rights recognized in various human rights instruments and with the United Nations Declaration on the Rights of Indigenous Peoples.

2. One of the activities carried out for this study, with the support of the Indigenous Intercultural University attached to the Fund for the Development of the Indigenous Peoples (Indigenous Peoples Fund), was a meeting in Managua on 9 and 10 November 2012. Participating in the meeting were representatives of the National Autonomous University of Mexico, the University of the Autonomous Regions of the Nicaraguan Caribbean Coast (URACCAN), the Amawtay Wasi University, the International Indigenous Women's Forum, the "Campinta Guazu Gloria Pérez" Institute of Intercultural Higher Education in Argentina, the Advanced School of Comprehensive Intercultural Education of Oaxaca, the German Agency for International Cooperation, the Indigenous Peoples Fund, Saúl Vicente and Myrna Cunningham.

3. This study summarizes experiences and learning processes relating to education, promoted by indigenous peoples in connection with their collective yearning to overcome poverty and social exclusion and to boost their knowledge, strengthen their institutions and increase their ability to govern themselves and to negotiate both within and outside their communities for the conditions needed to implement the indigenous peoples' goal of development with culture, identity and self-determination.

II. Presentation

4. Access to education for indigenous peoples as a human right has been amply documented (A/HRC/EMRIP/2009/2). Access, retention, permanence and graduation indicators — whenever the available data are broken down by ethnicity — show that there are gaps between the indigenous and the rest of the population.[1,2] This study attempts to analyze accessibility from a comprehensive point of view, paying particular attention to cultural accessibility. The Economic Commission for Latin America and the Caribbean (ECLAC) has pointed out, in this

[1] Guillette, Hall and Patrinos, Harry (2010). *Indigenous Peoples, Poverty and Human Development in Latin America: 1994-2004 (Executive Summary)*. World Bank.

[2] United Nations Educational, Scientific and Cultural Organization (UNESCO), *Regional Monitoring Report on Progress Toward Quality Education for All in Latin America and the Caribbean* (2012).

regard, that among the indigenous peoples educational inequality is manifested in two ways: (a) in exclusion from, or difficulty accessing, the system; and (b) the failure to incorporate either cultural diversity or specific cultural characteristics into the contents of what is taught and in overall teaching strategies. As ECLAC itself points out, in the case of the indigenous peoples, access and coverage are clearly just the starting point, if educational equality is to be achieved. They have to be supplemented with quality, efficiency and relevance in the educational system, that is to say, they have to be imbued with an intercultural approach.

5. The question of quality in education was taken up in the Report of the Expert Mechanism on the Rights of Indigenous Peoples, which points out that for indigenous peoples the quality of education is reflected in the extent to which it embodies their cultures, languages, and value, and that, for that to come about, the curricula must either be based on the beliefs and cultural values of the indigenous peoples or adequately reflect them (A/HRC/EMRIP/2009/2). That also presupposes the participation of professionally qualified persons (*los letrados*) in formal training.

6. Now, indigenous peoples are distinguished from the rest of society precisely because they maintain cultural practices and life styles based on their traditional knowledge, their vision of the world and their spirituality. Their knowledge systems are dynamic: they innovate from within; they encompass all aspects of community and global life; they are linked to management of the natural environment; they are cumulative and represent generations of experiences, careful observation and constant experimentation; but they also use and qualitatively adapt outside knowledge. When experiences work, they are built into collective knowledge. The territory and natural environment make one people's knowledge unique and different from another's.

7. Language and reliance on oral tradition has been an effective collective mechanism for transmitting indigenous knowledge and shaping the indigenous peoples' cultures. That does not, however, necessarily mean eschewing the practice of writing down and systematizing knowledge, know-how, insights and practices so as to share them with others.

8. When an indigenous people is capable of controlling its collective cultural heritage it achieves dignity for its members, lays the foundations needed to protect that heritage, and develops the ability to share its cultural manifestations with other peoples, thereby taking the first step toward the forging of intercultural relations.

9. Within communities and peoples, individual and collective roles and responsibilities are distributed in such a way as to maintain collective control of the cultural heritage. Certain people are responsible for generating new knowledge, others are responsible for communicating with the spirits, and authorities ensure respect for community rules; stones, roots, leaves, and water also play a role, complementing the others. Community rules also establish the role of the bearers of gifts and knowledge. The ways in which knowledge is transmitted, shared and passed from one generation to another are recognized and respected in the community. So each people has its own educational system.

10. Within that context, the indigenous peoples consider that a school education can help systematize traditional knowledge and make it more accessible and adaptable to the conditions the communities find themselves in today.

III. The knowledge, history and circumstances of the indigenous peoples in human rights instruments

11. The United Nations Declaration on the Rights of Indigenous Peoples recognizes the right of indigenous peoples to practise and revitalize their cultural traditions and customs, including the right to maintain, protect and develop the past, present and future manifestations of their cultures. It also recognizes the right to revitalize, use, develop and transmit to future generations, inter alia, their histories, languages, oral traditions, philosophies, writing systems and literatures. To ensure the above, the same Declaration proclaims the right of indigenous peoples to have the diversity of their cultures, traditions, histories and aspirations appropriately reflected in education. Following are some of the rights that are germane to this issue:

a. The right to practise and revitalize their cultural traditions and customs (Article 11);

b. The right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; to maintain and protect their religious and cultural sites. (Article 12);

c. The right to revitalize, use develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures (Article 13);

d. The right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources (Article 25);

e. The right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures; and to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions (Article 31).

12. The Declaration also establishes the right of indigenous individuals to have access to education in their own culture and language (Article 14). It is important, also, to point out that the Declaration recognizes the right of indigenous peoples and individuals not to be subjected to forced assimilation or destruction of their culture and that States must provide effective mechanisms for preventing any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities (Article 8).

13. Convention No. 169 of the International Labour Organization establishes that Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity, including in such action promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions (Article 2), as well as special measures, as appropriate, for safeguarding the persons, institutions, property, labour, cultures and environment of the indigenous peoples (Article 4).

14. The Permanent Forum on Indigenous Issues has recognized that the right to education in one's mother tongue is fundamental for the preservation and growth of culture and identity and for cultural and linguistic diversity (E/2010/43, para. 9). The Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2005 recognizes the importance of indigenous cultures and, in particular, the contributions made by indigenous knowledge systems to sustainable development. Article 7 of the Convention proposes creating an environment which encourages individuals and groups to create, produce, disseminate, and distribute their own cultural expressions, and have access to them, paying due attention to the circumstances and needs of different social groups, including indigenous peoples.

15. UNESCO also recognizes that intangible cultural heritage is transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. (Article 2 of the Convention for the Safeguarding of the Intangible Cultural Heritage).

16. The Convention on the Protection and Promotion of the Diversity of Cultural Expressions refers to cultural pluralism, the right to be different and the need for States to have cultural policies to protect and respect diversity and contribute to understanding between cultures. The UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage established for each State Party the fundamental duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural heritage situated on its territory (Article 4). The Convention on Biological Diversity also values local communities' knowledge and recognizes the right to benefits arising from the use of their traditional knowledge and technologies.

17. The Programme of Action of the Second. International Decade of the World's Indigenous People includes the following education-related objectives:

(a) It is recommended that global efforts should be made to raise awareness of the importance of mother tongue and bilingual education especially at the primary and early secondary level for effective learning and long-term successful education;

(b) The international community should continue to promote bilingual and cross-cultural education programmes for indigenous and non-indigenous peoples, schools for girls and women's literacy programmes and share good practices in the field;

(c) UNESCO is urged to identify universities, primary and secondary schools and teaching and research centres for indigenous peoples that fulfil satisfactorily their programmes and projects and grant them recognition and technical and financial support promoting their work.

18. The International Implementation Scheme of the United Nations Decade of Education for Sustainable Development, 2005-2014 emphasizes that the profound knowledge and continuous use of their surroundings enable the indigenous peoples to make specific contributions to the general discussion and offer their subtle understanding of the practices of human survival and development "management".

In 2003, UNESCO published a position paper entitled "Education in a Multilingual World" aimed at clarifying some key concepts on the subject and presenting the Organization's pertinent recommendations, declarations, and guidelines.

19. For its part, the XVI Ibero-American Summit of Heads of State and Government, held in Montevideo on 3-5 November, 2006, adopted the Ibero-American Cultural Charter, which points to the recovery and preservation of languages as a factor strengthening identities. Hence it was deemed necessary at the IV Forum of the Ibero-American Cultural Charter, held in Otavalo, Ecuador, in May 2009, to design and implement bilingual and intercultural education programmes with the necessary political, legal, financial, material and technological support and specific targets to be achieved through their execution (for instance, completely bilingual primary schools within 10 years).

IV. Experiences with incorporating the knowledge, history and circumstances of indigenous peoples in educational systems

Bilingual intercultural education programmes

20. Since language is key to the transmission of cultures, bilingual intercultural education policies constitute the first experiences with attempts to promote alternative educational models that respect the cultural and linguistic diversity of the indigenous peoples. Each experience was the outcome of complex negotiations between the indigenous peoples and States. They also vary in level of institutionalization, degree of control exercised by indigenous peoples' organizations, cultural orientation of the curriculum and importance attached to oral or written education.[3] Also important, in this connection, are endogenous teaching practices, teaching media and their application to schools.

21. Despite four decades of experience in Latin America and the Caribbean, outcomes are fairly heterogeneous. Bilingual intercultural education is practised in 17 countries, either across the board (Plurinational State of Bolivia, Chile, Nicaragua, Bolivarian Republic of Venezuela) or in a targeted fashion (Argentina, Costa Rica, Honduras, Guatemala).[4] More than half the indigenous boys and girls in third grade in Paraguay and in Guatemala receive at least one hour a day of education in their mother tongue. The proportion is much smaller in Mexico and Peru, but even so it is high compared to such countries as Chile, Colombia, Brazil and Ecuador, where only between 8% and 1% of indigenous children in third grade attend schools in which at least one hour a day is spent teaching in an indigenous language.[5]

22. As regards the incorporation of indigenous knowledge in bilingual intercultural education experiences, the following strategies were identified:

(a) **Centrally designed curricula with an intercultural approach**. Here experiences varied. One tendency has been to structure the curriculum in such a way that the content revolves around daily life, using a common national core, with local

[3] Sheila Aikman, Intercultural education and literacy: an ethnographic study of indigenous knowledge and learning in the Peruvian Amazon (1999).

[4] Luis Enrique López and Carlos Rojas, La EIB en América Latina bajo examen (World Bank, 2006).

[5] Néstor López, La educación de los pueblos indígenas y afrodescendientes (UNESCO. IIPE, Buenos Aires, 2011).

contents[6] One documented experience took place in the Plurinational State of Bolivia (see footnote 4), where the idea was to have a curriculum with an intercultural and social constructivist approach, incorporation of the indigenous language, with Spanish as a second language, and active cultural input from design of the curriculum to preparation of the teaching modules. Principles underlying the curricular reform process include heterogeneous cultures, languages, needs and capacities as the basis for skills development; an open and flexible curriculum making it easier for teachers and directors, with the support of the community, to innovate and diversify the courses offered; application of different methodologies for acknowledging the different cultural patterns used to construct knowledge; an intercultural dimension that breathes life into the curriculum because it is open to cultural and linguistic realities; the mother tongue, an essential ingredient of culture, and bilingual intercultural education, which boosts self-esteem, allows one to appreciate languages and cultures, improves the ability to master a second language and makes intercultural dialogue possible; and a school organized according to levels and cycles so as to be able to offer pupils differentiated learning experiences.

(b) **Curricular diversification at the local level**. In these cases, the curriculum includes content relating to local knowledge and techniques. Here, too, importance is attached to working with the pupils' mother tongue. This strategy was used in schools in the Peruvian Amazon by the Programme for Training Bilingual Teachers in the Peruvian Amazon. The best experiences were those in which the curriculum took communities into account and addressed the needs and demands arising from specific contexts, because they offer more viable alternatives and allow for a gradual approach, and encourage the participation of teachers, family members and community authorities and professionals.

Indigenous community members have also participated in research aimed at delving into indigenous knowledge, history, and surroundings, with the findings of that research then being used to advance more diversified curricula that transform local practices in the direction of development with identity.

Study of FISHES AND TURTLES in Nicaragua

The bilingual intercultural education programme in Nicaragua began in 1984. With a view to strengthening transmission of the Mayangna culture, knowledge and language, UNESCO worked with the autonomous regional educational system, the Ministry of Education and the Mayangna communities on the fish and turtles study, the publication of a book on "Mayangna Knowledge of the Interdependence of People and Nature," the development of complementary teaching aids, study plans, students' guidelines and methodological suggestions for teachers. The book is being used in third grade of primary school in the people – culture and nature area and in the mother tongue sub-area. At every stage the activities were conducted by the Mayangna teachers, with technical support from UNESCO.

Source: Paule M. Gros and Nacilio Miguel Frithz, Mayangna Knowledge of the Interdependence of People and Nature: Fishes and Turtles (UNESCO 2010).

[6] Education Reform Law 1565 of 7 July 1994 (Plurinational State of Bolivia).

(c) **Community Participation**. This involves concrete participation by community experts in traditional knowledge and appropriate technology in such fields as crafts, botany, agricultural techniques, oral history, medicine, music, astronomy, religious practices and art, among others:

(i) **Establishment of indigenous schools**. These are community schools, some of which are based on a self-management approach. At the same time, the government is urged to recognize the right of indigenous peoples to establish their own educational system and that it form part of the national educational system. While the importance of bilingualism is acknowledged, it is essential that the educational model be based on the concepts, methodological practices and techniques supported by their own cultures (see footnote 4). Examples identified in this category include the schools run by the Centro de Documentación e Investigación Maya-CEDIM, an educational project based on appreciation and respect for Mayan culture and spirituality in Guatemala;

(ii) **Establishment of autonomous educational subsystems**. Bilingual intercultural education has been strengthened by legislation and has gone hand in hand with democratization in the region and the decentralization of administrative and political processes promoted by a number of countries.[7]

Indigenous Education in Colombia

The Regional Indigenous Council of Cauca was established in 1971, with the comprehensive "life plans" proposal, which envisaged recovery of indigenous territory, the expansion and strengthening of town councils, non-payment of rent, dissemination of laws and demands that they be duly enforced, recuperation of the indigenous peoples' own customs, traditions and history, the training of teachers to teach in their mother tongues, and, as needed, protection of natural resources and fostering of community-based economic organizations.

An indigenous education programme was developed, geared to endogenous socialization for a reappraisal of culture guaranteeing the survival and reproduction of the people concerned. In it, the curriculum is put together with the help of the community and qualified professionals. The educational model devolving power to indigenous councils and organizations was broadened and strengthened in recent decades by Decree No. 1142 of 1978, which granted the peoples autonomy in educational matters, Law No. 115 of 1994, and Decree No. 804 of 1995, which set guidelines for curricula and established that regional educational authorities were empowered to foster the participation of traditional authorities, and the strengthening of the autonomy proposal of the National Indigenous Organization of Colombia. The 1991 Political Constitution of Colombia recognized ethnical diversity and cultural, linguistic, educational and nationality rights.

Source: Source: Fernando Romero, F. La Educación indígena en Colombia: referentes conceptuales y sociohistóricos. Posted at: www.naya.org.ar/congreso2002/ponencias/fernando_romero_loaiza.htm

[7] Luis Enrique López and Wolfgang Küper. Bilingual Intercultural Education in Latin America: Assessment and Prospects. .December 2000.

23. The assessment of these various types of experience makes it clear that bilingual intercultural education necessarily refers to two separate concepts — interculturalism and bilingualism — and that a bilingual education is not necessarily an intercultural education. Some of the challenges with respect to boosting the potential for bilingual intercultural education programmes are:

(a) They continue to emphasize the linguistic component in bilingual intercultural education programmes: in some countries, talk has even begun of teaching a second or third language;

(b) Bilingual intercultural education is still treated in various countries as an educational programme for the indigenous and not for society as a whole;

(c) Interculturalism is still conceived in most bilingual intercultural education programmes in terms of the harmonious coexistence of cultures, rather than in terms of empowerment;

(d) The programmes advocate the need to institutionlize bilingual intercultural education in Ministries of Education, through adequate allocation of human, material and financial resources. There is still a tendency for the programmes to be financed more with external cooperation than with domestic funding;

(e) The indigenous peoples' demands with respect to changes in bilingual intercultural education programmes are for control or participation in educational and curricular reform. To achieve that, a supplementary strategy is to resume the struggle for legal reform measures;

(f) There is little coordination among countries on bilingual intercultural education programmes, aimed at promoting learning through the sharing of experiences. There is scant communication among national teams, who fail to take advantage of experiences and progress made in Latin America;

(g) There is still little coordination between educational systems and sub-systems and between western and indigenous knowledge systems, whereby local knowledge is always underestimated.

V. In technical, vocational and university education

24. It has proved more challenging to embed the knowledge, history and contemporary circumstances of indigenous peoples in the curricula of these types of education.[8] There is a high dropout rate of indigenous students between primary and secondary education. Although, generally speaking, data broken down by ethnic group are lacking, the little information available indicates that only a small number of indigenous students are enrolled in post-secondary and higher education for a number of reasons, including economic constraints, the impossibility of combining work with studies and the lack of post-secondary schools and universities in rural areas.

[8] Inter-American Development Bank, "Access of Indigenous Peoples to Post-Secondary, Vocational, Technical and University Education" (2006). Posted at: http://www.iadb.org/es/noticias/articulos/2006-04-12/acceso-a-la-educacion-postsecundaria-para-pueblos-indigenas,2936.html

25. The poor quality of primary and secondary schools means that students are ill-prepared and unenthusiastic about continuing their studies (see footnote 8). Moreover, students that go from bilingual intercultural education to conventional post-secondary and higher education establishments face a cultural shock. The move from their communities to urban centres involves a cultural disconnect that tends to raise dropout rates and when students do manage to overcome such barriers, many succumb to acculturation, i.e. adapt to a new culture and lose touch with their own culture and community.

26. Post-secondary and higher education may also be irrelevant for many indigenous students. Some experiences show that that school drop-out rates may fall if academic and cultural support is provided for indigenous students attending institutions outside their communities, to help them adjust to a new environment while maintaining ties to their own cultures (see footnote 8).

27. One area in which the incorporation of indigenous knowledge has been encouraged is indigenous teacher training. In Nicaragua, in the Northern Atlántic and Southern Atlantic Autonomous Regions, indigenous peoples and ethnic communities are autonomous under a system that recognizes the right to a bilingual education and is based on diverse cultures. In 1997, the autonomous regional councils adopted the regional autonomous educational system. In that system, in 2000, they began a curricular reform process in teacher training establishments. The objectives included:

(a) Strengthening cultural identity by promoting bilingualism, multilingualism, and interculturalism;

(b) Developing the ability to analyze the political, social, cultural and economic processes arising at both the national level and in relation to developments on Nicaragua's Caribbean coast;

(c) Conducting research into social, cultural, educational, economic, and community development issues and, in general, into autonomous region affairs, with a view to working out solutions to local problems; and

(d) Training "agents of change" promoting the sustainable development of the peoples and communities on Nicaragua's Caribbean Coast.

28. One particularly challenging field is technical and vocational training. One study of Sami adults pointed out the existence of adult education programmes specifically designed to help adults shift from reindeer herding to other professions. The study found no programmes for strengthening the traditional indigenous life. The Sami parliaments and the Sami council have pronounced on adults' right to education and have indicated that it should be imparted in the Sami language and respect Sami culture. However, there are limitations relating to the poor quality of the teachers, the dearth of teaching material in the Sami language and the students' own ignorance of the language. Given the obligation to follow a national curriculum, there is little room for embedding Sami knowledge in the courses. Educational establishments have few incentives to include Sami knowledge and culture in their academic programmes and, in any case, at times restrict themselves to including occasional Sami language courses.[9]

[9] Svein Lund. Adult education and indigenous peoples in Norway (UNESCO Institute for Education, 2000).

29. In conclusion, one can say that the positive experiences were those that were started by indigenous organizations and communities themselves with a diversified curriculum tailored to local circumstances.

The "Campinta Guazu Gloria Pérez" Institute of Intercultural Higher Education in Argentina

This Institute was founded following an agreement reached by the Assembly of Indigenous Communities and Peoples of Jujuy in 2007. Later on, Provincial Ministry of Education resolution No. 2184/12 officially turned it into a kind of "Social Management" Institute. It has six indigenous knowledge centres offering two courses: a third-level degree ("tecnicatura superior") in indigenous development, which trains professionals to promote "development with identity" in their community and to work on behalf of their peoples, and a diploma in bilingual intercultural education for training facilitators capable of advancing interculturalism and fostering diversity.

Innovative aspects include:

- The institutional management model. The Institute is a member of the Council of Indigenous Organizations of Jujuy (COAJ) and therefore reports to the Assembly of Indigenous Communities and Peoples of Jujuy. Its governing body comprises members of the indigenous communities elected by the Assembly. The rector and academic secretary are elected by the Assembly of Communities and Peoples.
- In order to ensure that indigenous knowledge is embedded in the curriculum, minimum subject matter quotas are guaranteed with an emphasis on issues relating to spirituality, gender and interculturalism. An intracultural approach is applied for one year and an intercultural approach for two years. Half the training time is spent in the field, in practical work, community activities, and research studies aimed at strengthening community ties.
- Emphasis is placed on collective (community, students, facilitators) construction of knowledge, based on reinterpretation (*re-simbolización*) of the research, and the systematization and communal validation of the knowledge acquired. The facilitators comprise a person with academic qualifications and an indigenous wise man or woman, both of whom must be endorsed by the indigenous communities and/or organizations. Those supervising the research are indigenous and need not have an academic degree. The community helps draw up the curriculum, select the teachers and select and endorse the students..

30. There are few examples of institutes of higher education that manage to embed indigenous peoples' knowledge in their curricula in an appropriate manner. Nevertheless, in recent decades, the number of initiatives has increased in response to a variety of processes related either to academic interest in the subject or pressure

from indigenous organizations. Essentially, it is possible to discern the strategies mentioned below:

Conventional universities with special programmes

31. In the past few decades, several universities have begun programs aimed at highlighting indigenous peoples' issues. Among other activities, they offer university extension courses or postgraduate courses dealing partly with the knowledge, history and contemporary circumstances of indigenous peoples. In many cases, such programs have come with scholarships for members of indigenous communities and a research component on various issues relating to indigenous peoples. In certain cases, the scholarships come with a support and monitoring system to ensure that the students graduate.

National Autonomous University of Mexico

A "Mexico as a Multicultural Nation" university programme was established, coordinated by the humanities faculty at the National Autonomous University of Mexico and supported by all its faculties and schools.

To familiarize students with issues relating to the multicultural nature of Mexican society, the University teaches the "Mexico, A Multicultural Nation" course on an optional basis in 14 faculties and schools. It is taught by specialists in the different areas (indigenous language and literature, the economic and social development status of the indigenous peoples of Mexico. indigenous women, etc.), many of whom are indigenous academics. Participating in the research done under the programme are indigenous academics, professors and specialists in fields of the courses to be taught.

A scholarship programme for indigenous students exists, with a technical and cultural support component.

Support is provided for community activities, such as the establishment of the Chamber of Indigenous Enterprise and a programme to support the business community.

A Diploma course was developed to boost indigenous women's leadership, entailing: a) participation in the design of a curriculum incorporating the knowledge, history and context of indigenous peoples and women in particular; b) participation in running the course with the National Commission for the Development of Indigenous Peoples, the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the Alliance of the Indigenous Women of Central America and Mexico, and the Itinerant Indigenous Department/Intercultural Indigenous University; c) the selection and monitoring of participants with community organizations; and d) the use of indigenous teachers.

Mandatory course. Itinerant Indigenous Department at the Intercultural Indigenous University

32. The other strategy used includes mandatory courses in training programmes. An instance of this was found in the Intercultural Indigenous University. The University's Network has 30 associated academic centres and several international cooperation agencies. The centres are conventional public, private, intercultural, community and indigenous universities. A unifying factor is that the programmes all require that indigenous organizations interact with the academic staff at the universities, in a mutual exchange of knowledge.

33. The Itinerant Indigenous Department (*Cátedra Indígena Itinerante*) was formed to ensure the incorporation of indigenous knowledge, its purpose being to provide an opportunity in postgraduate courses for information, analysis and conceptual and methodological insights into indigenous knowledge, wisdom, ideology and perception of the cosmos. The idea is for the Department to provide conceptual, political, spiritual and philosophical support in postgraduate studies. It seeks to analyze the epistemological framework surrounding the indigenous people's world view, their concept of life, by discussing the foundations and the practical and conceptual analytical categories underlying the generation of indigenous knowledge. The Deprtment aims to: a) place the indigenous peoples' knowledge, spirituality and vision of the cosmos on the academic agenda; b) interpret epistemological, ideological and spiritual elements in indigenous knowledge and seek ways to teach them; and c) provide inputs for analyzing power relations and the development of the indigenous movement and lay the groundwork for forging intercultural societies based on relations between indigenous and western knowledge.

34. The Department is organized in five units within the postgraduate courses offered by the University with a duration of 200 hours. The facilitators are 60 indigenous wise women or men, experts, and leaders. The Department's five units are: a) indigenous knowledge, identity and spirituality; b) indigenous movement and relations with States; c) indigenous rights and human rights; d) indigenous peoples and geopolitics; and e) the contribution of ancestral knowledge to the construction of intercultural societies.

Establishment of alternative (intercultural, community, indigenous) universities

35. Another strategy has been to establish institutes for higher education. UNESCO's International Institute for Higher Education in Latin America and the Caribbean (IESALC)[10] pointed out that by 2002 the United States and Canada had reached mature levels of indigenous higher education. The United States had some thirty indigenous colleges and universities, Canada three. There are also indigenous universities in the Arctic and the Pacific. The Samiuniversity at Kautokeino (Norway) was established in 1989 to impart Sami higher education, including courses in education and journalism. Its curriculum seeks to address the needs of the Sami and it receives Sami students from several countries. Starting in the 1990s, intercultural universities also begin to appear in Mexico and Peru.

36. In recent decade, several university initiatives have been advanced by the indigenous peoples. Two of a number of innovative experiences have involved an

[10] Leonzo Barreno, "Educación superior indígena en América Latina." IESALC, UNESCO, 2002.

autonomous system: the Advanced School of Comprehensive Intercultural Education of Oaxaca and the community universities of the autonomous regions of Nicaragua, the University of the Autonomous Regions of Nicaragua's Caribbean Coast and Bluefields Indian and Caribbean University. There are other universities established by indigenous organizations: Ecuador's Amawtay Wasi University and Colombia's Indigenous Intercultural Autonomous University, founded by the Cauca Indigenous Regional Council. In the Plurinational State of Bolivia, through Supreme Decree No. 29664, promulgated in August 2008, the Government established three indigenous universities: Casimiro Huanca (Quechua) in Chimoré, in the Department of Cochabamba; Tupac Katari (Aymara) in Warisata, in the Department of La Paz; and Apiaguaiki Tüpa (Guaraní) in Machareti in the Gran Chaco region, in the Department of Chuquisaca. They enjoy different degrees of recognition and face the hurdle of going through the university accreditation processes under way in the countries of the region, particularly because those countries lack intercultural criteria and indicators.

37. The indigenous peoples' knowledge, history and contemporary circumstances are embedded in various ways, namely:

(a) The way the curriculum is constructed and programmes are managed and developed are based on an indigenous philosophy and view of the world (*cosmovisión*). An example of this approach is the Amawtay Wasi University, established by the Confederation of Indigenous Nationalities in Ecuador. It aspires to be part of the living fabric interwoven by cosmic interculturalism, contributing to the formation of human talents that accord priority to a harmonious relation between the Pachamama and the Runa, basing itself on "Sumak Kawsanamanta Yachay" (the living well community), as the foundation of the scientific community;

(b) They arise as the result of historical processes that transform structural relations among the indigenous peoples and States. An example of this experience is the case of the community universities in the Autonomous Regions of Nicaragua, which arose when the Nicaraguan State recognized an autonomous regime for the indigenous peoples and ethnic communities living in the former region of Moskitia. This experience, which bears some resemblance to the case of the Advanced School of Comprehensive Intercultural Education of Oaxaca, reflects a regional setting in which autonomous indigenous rights are implemented;

(c) They are embodied in comprehensive models, encompassing several levels and types of education. For instance, the 2003 decree founding the Advanced School of Comprehensive Intercultural Education of Oaxaca establishes that it is authorized to conduct higher education, senior high school, adult and artistic education, and vocational training;

(d) They are decentralized, in the sense that the courses are conducted in different locations and go out to the communities, use indigenous languages and rely on facilitators who are local indigenous sages;

(e) The curricula and study plans are worked out with the participation of indigenous leaders and sages;

(f) They tap bilingual intercultural education experiences, "language nests," the curricular reform in basic education, indigenous community secondary schools and the comprehensive community baccalaureate programmes;

(g) They incorporate intercultural approaches. They apply affirmative action measures to promote the participation of women and of members of remote and widely dispersed communities. In some cases, there are school and community areas; in others, 50% of the academic activities are conducted in the communities themselves;

(h) They foster forums open to discussion on important community issues and exchanges of ideas with the communities aimed at generating approaches with an indigenous identity perspective;

(i) Management models try to include representatives of the indigenous peoples on the governing boards. In some cases they report to indigenous organizations;

(j) They include criteria designed to direct educational activity toward social training of the individual regarding history, his or her origin, culture, vision of the world, language and surroundings, the ability to make judgments and to espouse ethical values;

(k) They seek to apply innovative, intercultural teaching models, such as collective construction of knowledge, deconstruction and reconstruction of know-how, and reconnection. Academic tasks include questioning, challenging, investigating, scrutinizing, describing, linking, explaining, deducing, hypothesizing, complicating, criticizing, acting, reviewing, acting again, correcting, always assessing, learning from problems and interpreting social phenomena.

Formation of university networks

38. Another strategy used to promote the embedding of indigenous peoples' knowledge, history and contemporary circumstances has involved sharing experiences and networking. A number of universities have linked up to exchange experiences, offer joint programmes, promote scholarships for indigenous students, and so on. The Arctic Universities Rectors' Forum[11] has pronounced on the need to strengthen the individual and collective capacities of the indigenous peoples, by conducting training and research activities based on the peoples' needs and taking into account traditional knowledge and indigenous languages, while increasing knowledge about indigenous peoples, including their history, spirituality and cosmogony in all courses of study.

39. Australia's National Indigenous Higher Education Network has also committed to protecting the use of indigenous knowledge, knowledge systems, languages and epistemology in higher education curricula, policies, research and student services.[12]

40. In Latin America and the Caribbean there have been several forums for coordination between indigenous universities and related programmes. The first was convened by the Saskatchewan Indian Federated College, URACANN and Costa Rica's University for Peace in 1997 and was attended by 23 institutions. In 1999, the Office of the United Nations High Commissioner for Human Rights and the Government of Costa Rica convened 70 experts from Australia, the Philippines, Benin, South Africa, the Russian Federation and Latin America and that same year

[11] The UArctic Rectors' Forum 2011 was held in Guovdageaidnu, Norway on 23.-25 March 2011.
[12] http://www.innovation.gov.au.

URACCAN organized the "Indigenous 2000" event. UNESCO's IESALC has organized three regional meetings on higher education of the indigenous peoples of Latin America. As of 2006, the Indigenous Peoples Fund has been promoting the UII Network, which includes, inter alia, the Abya Yala Network of Community Intercultural Indigenous Universities. Indigenous knowledge is still embedded in the collective memory and it is up to all the sectors involved to make it part of the new higher education paradigm practised by the institutions attending such events.

41. The existence of indigenous, intercultural and community universities has meant that the various different training experiences that in the past were conducted by indigenous organizations have now become institutionalized.

Degree courses for the advancement of indigenous women

In Latin America and the Caribbean, a number of indigenous organizations have supported training courses for indigenous women: the Dolores Caguango School run by Ecuanurari in Ecuador, the life-long workshop for Andean and Amazonian women run by the Center of Indigenous Cultures of Peru (CHIRAPAQ), the Political Association of Maya Women and the Guatemalan Widows National Coordination Office, the Indigenous Women's Programme of the National Indigenous Organization of Colombia (ONIC), and so on. Thanks to partnerships among indigenous women's networks — Enlace Continental de Mujeres Indígenas, Alianza de Mujeres Indígenas de Centroamérica y México, Red de Mujeres Indígenas sobre biodiversidad, Foro Internacional de Mujeres Indígenas, Coordinadora de la Cuenca Amazónica, Consejo Indígena de Centroamérica, Coordinadora Andina de Organizaciones Indígenas — with the National Autonomous University of Mexico, the Centre for Research and Advanced Studies in Social Anthropology, the Indigenous People's Fund of the Intercultural Indigenous University, technical assistance from UN Women, the Itinerant Indigenous Department and funding from the Mexican Government's National Commission for the Development of the Indigenous Peoples, Belgian cooperation, the Spanish Agency for International Development Cooperation, the Ford Foundation and the German International Cooperation Agency, more than 60 indigenous women have graduated every year for the past four years. These experiences are also coordinated with the Global School for Indigenous Women's Leadership promoted by the International Indigenous Women's Forum, which reaches areas beyond Latin America and the Caribbean.

The programme has made it possible to use a joint curriculum incorporating the knowledge, history and needs of indigenous women, along with an innovative methodology for "reconnection" among identities, knowledge, know-how, cultures, age cohorts and different experiences.

VI. Challenges

Role of research in the generation and reproduction of indigenous knowledge

42. Indigenous research contributes to the empowerment of the peoples by producing knowledge and developing capabilities. Thereby it contributes, also, to the continuity of the indigenous peoples, with their own cultures, languages, traditional knowledge, philosophies and vision of the cosmos.[13] For each people, the concept of traditional knowledge has its own connotations and terminology. For instance, for the Sami people, the term combines "knowledge" with "inheritance." There are some experiences that have begun to provide deeper insights into indigenous epistemology,[14] such as the methodologies for indigenous research.

The quest for intercultural research strategies

In connection with the Observatory on Violence against Indigenous Women, and in coordination with PATH-InterCambios, the Centre for the Autonomy and Development of Indigenous Peoples, the Wangki Tangni Organization and URACCAN's Centre for Studies and Information on Multi-ethnic Women, the International Indigenous Women's Forum held a workshop to define and discuss intercultural research. Intercultural research aims to restore indigenous and Afro-descendant peoples' ability to produce knowledge. Intercultural research recognizes the view of the world and specific cultural practices as a source of know-how and knowledge. An indigenous woman researcher conceptualizes in her own vision of the world, puts back, updates and generates new knowledge based on the culture of the participants in the research process. She orders and ranks knowledge from her own perspective on the world and her local cultural setting. This is especially enriching as the process of forging theories and concepts advances, based on her own vision of the cosmos, giving rise to concepts that synthesize meanings culled from a unique cultural perspective. Methodological strategies worth bearing in mind include: practices, values and beliefs used to legitimize violence against indigenous and Afro-descendant women (What is learnt? How and where?); positive practices, values, and beliefs in the community that contribute to good living and living well as women; and curing as an intercultural practice to rehabilitate women survivors of violence.

43. In the Pacific, there is an important school of thinking and advocacy regarding the decolonization of research methods,[15] which is envisaged as the need to take indigenous concepts and perspectives as the basis for understanding theory and research from the points of view and purposes of those same peoples. Again among the Sami, certain steps have been pointed out, such as (see footnote 13): the decolonization of theories, the development of indigenous methodologies, the use of

[13] J. Porsanger, "Self- determination and indigenous research: capacity building on our own terms."

[14] http://www.kaupapamaori.com/assets//HutchingsJ/te_whakaruruhau_chpt3.pdf.

[15] www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/journals-and-magazines/social-policy-journal/spj17/17_pages214_217.pdf

indigenous epistemologies, and highlighting what is special and necessary according to the logic and understanding of the indigenous world. According to a few additional recommendations, the research methodology must:

(a) Safeguard the indigenous peoples' intellectual property;

(b) Prevent knowledge from being misinterpreted and misused;

(c) Allow the voices to be heard;

(d) Acknowledge the women and men bearers of knowledge; and

(e) Ensure that findings are returned and put back into the pool of knowledge.

44. In the workshop on intercultural research, it was also pointed out that for intercultural research the preferred investigative methods are: the qualitative method, participatory research-action, the biographical method (stories taken from life, lives led, biographies, autobiographies, and so on) and activist (engaged) research. It was suggested that intercultural research prefers investigative techniques that led women's voices be heard and generate collective knowledge, such as workshops, discussion groups, focus groups, collective interviews and dialogue.

45. An important component is that all research conducted using an intercultural research method envisages making an impact and is accompanied by an action plan for immediate use of the data obtained to transform the issues diagnosed. Likewise, placing the research in a specific territorial setting makes transformation possible, because it is through the involvement of local players in the reflection process that awareness of the problem increases, because already that process is sowing the seeds of change.

46. Another important facet is that intercultural research does not presume to be neutral nor does it attempt to "step back" in order to "keep its distance" and acquire "objectivity." Intercultural research involves commitment and responsibility in the documentation of evidence. Intercultural research does not aspire to be objective in the positivist sense that ignores people's subjectivity. In reality, positivism fails to see that research is not value-free: research is never neutral because it is always undertaken with specific directions and purposes in mind.

Recognition and protection of indigenous knowledge

47. Despite the various instruments recognizing indigenous knowledge, comprehensive experience with protecting it is still scant.

Continue working on and negotiating the criteria for accrediting intercultural higher education

48. The strategies deployed to embed indigenous peoples' knowledge in educational system curricula show that the most successful are those in which the peoples themselves are directly involved. Indigenous universities appear to an option that can meet their needs and demands in this field. However, they are up against the fact that the conventional institutions and States do not fully understand those needs and demands. In many cases, indigenous universities are not accredited and cannot rely on budget allocations. They are forced to adopt an institutional identity at odds with recognized rights and subjected to mono-cultural accreditation

criteria. It is therefore necessary to establish evaluation and accreditation processes based on criteria and indicators that support intercultural educational models, categories of institution suited to the indigenous peoples, and the teaching-learning systems they develop autonomously.

VII. Recommendations

49. It is recommended that States ratify the recommendation that, based on Article 31 of the Declaration, both the World Intellectual Property Organization and the States adopt effective measures for recognizing the right of indigenous peoples to protect their intellectual property, including their cultural heritage, their traditional knowledge, and the manifestation of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games, and visual and performing arts.

50. It is recommended that, based on Articles 14 and 15 of the Declaration, States support indigenous peoples with a view to establishing their own educational systems and institutions imparting education in their own languages and in keeping with their cultural methods of teaching and learning.

51. It is recommended that UNESCO, the United Nations Children's Fund (UNICEF) and other competent bodies of the United Nations convene, together with the Forum, a meeting of experts on intercultural matters and education and representatives of United Nations agencies aimed at re-launching bilingual intercultural education.

52. It is recommended that States recognize the importance of the Higher Education Sustainability Initiative launched during the United Nations Conference on Sustainable Development of 2012, and incorporate the knowledge, history and proposals of the indigenous peoples in the activities to be undertaken.

53. It is recommended that Governments and agencies of the United Nations system establish specific measures to support indigenous, intercultural and community universities in their academic, organizational, financial and accreditation processes.

54. It is recommended that support be lent to the dissemination of best practices and the sharing of initiatives in indigenous education and intercultural, indigenous research by strengthening networks among indigenous universities and related university programmes.

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Discussion on the World Conference on Indigenous Peoples

Study on national constitutions and the United Nations Declaration on the Rights of Indigenous Peoples

Note by the secretariat

Pursuant to a decision of the Permanent Forum on Indigenous Issues at its tenth session (see E/2011/43, para. 101), Megan Davis, Simon William M'Viboudoulou, Valmaine Toki, Paul Kanyinke Sena, Edward John, Álvaro Esteban Pop Ac and Raja Devasish Roy, members of the Forum, undertook a study on national constitutions and the United Nations Declaration on the Rights of Indigenous Peoples, with a view to assessing the nature and extent of the inclusion of indigenous peoples' rights in national constitutions with specific reference to the rights affirmed in the Declaration, which is hereby submitted to the Forum at its twelfth session.

* E/C.19/2013/1.

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Study on national constitutions and the United Nations Declaration on the Rights of Indigenous Peoples[1]

I. Introduction

1. At its tenth session, in 2011, the Permanent Forum on Indigenous Issues mandated a study on the nature and extent of the inclusion of the human rights of indigenous peoples in national constitutions, with reference to the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples.

2. The present study provides insight into the most recent developments in those States that have recognized indigenous rights in their constitutions. It investigates the ways in which States are currently carrying out constitutional reform processes that include recognition of the rights and culture of indigenous peoples. In part II, the provisions of the Declaration that are relevant to national constitutions are considered, while part III contains a summary of recognition of indigenous rights or indigenous peoples in a sample of constitutions globally to demonstrate how the constitutional reform process has been or can be undertaken. Part IV contains a more detailed consideration of current constitutional reform processes in Australia, Bangladesh, Kenya, Nepal and New Zealand. Part V comprises conclusions and recommendations.

II. United Nations Declaration on the Rights of Indigenous Peoples and constitutional recognition

3. The Declaration contains provisions that are relevant to the issue of constitutional recognition of indigenous peoples. These are:

(a) Article 3, which states that indigenous peoples have the right to self-determination and that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development;

(b) Article 18, which states that indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions;

(c) Article 19, which states that States are to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

4. Constitutions are the supreme law of most countries. While they can be both written and unwritten, countries have, since the Second World War, tended to adopt written constitutions. Over the past few decades, many States have recognized indigenous peoples in their constitutions. Recognition can be both weak and strong. A weak form of recognition may be a non-binding form of words that recognizes the

[1] The authors wish to acknowledge the invaluable assistance that they received in drafting the present study from John C. Scott, Daniel Cabello Llamas and Patricia Bittner, from the Center for Public Service Communications, and Dennis Mairena, from the Centro para la Autonomía y Desarollo de los Pueblos Indígenas.

presence of indigenous peoples within a State, while a strong form of recognition may involve entrenchment of indigenous peoples' rights, such as treaty rights or land rights, or entrenchment of a prohibition on racial discrimination. Constitutional recognition is regarded as an important symbolic and substantive development that is about not only entrenchment of substantive indigenous rights but also improvement of well-being. As one indigenous leader from Australia explains:

> I have come to think of national constitutions as the ultimate framework within which the wellbeing — or un-wellbeing — of a nation's citizens is provided for. For it is the national constitution that defines how a society is to be governed and the place of the citizen and his or her relationship with other citizens and the country's institutions.[2]

5. This idea has been supported by the Royal Australian and New Zealand College of Psychiatrists, which identifies an association between lack of constitutional recognition and the socioeconomic disadvantage of indigenous peoples. In particular, the College argues that recognition is a critical step to support the improvement of indigenous mental health and that the lack of acknowledgement of a people's existence in a country's constitution has a major impact on their sense of identity and value within the community and perpetuates discrimination and prejudice, which further erodes the hope of indigenous people.[3]

III. Recognition of indigenous rights in constitutions

6. The present section identifies the ways in which countries comply with the above-mentioned articles of the Declaration. Not all the constitutions listed comply with each article. Some address only parts of various articles. The list of countries selected herein is not an exhaustive list of all countries that incorporate protection of indigenous rights into their constitutions. Rather, the list is representative of the range of ways in which such rights are constitutionally recognized, both regionally and globally.

A. Article 3 of the Declaration: right to self-determination

Arctic

7. Article 2 of the Constitution of Sweden provides that the opportunities of the Sami people and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own are to be promoted. Article 17, dealing with freedom of trade, provides for the right of the Sami population to practise reindeer husbandry.

8. The Constitution of Finland recognizes the right of the indigenous Sami, in addition to Roma and other groups, to maintain and develop their own languages

[2] Noel Pearson, "Constitutional reform crucial to indigenous wellbeing", *The Australian*, 24 December 2011. Available from www.theaustralian.com.au/national-affairs/opinion/constitutional-reform-crucial-to-indigenous-wellbeing/story-e6frgd0x-1226229707704.

[3] Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel* (Canberra, January 2012), p. 40. Available from www.youmeunity.org.au/final-report.

and cultures. Section 121 stipulates that, in their native region, the Sami have linguistic and cultural self-government.

9. Article 110a of the Constitution of Norway states that it is the responsibility of the State to create conditions enabling the indigenous Sami people to preserve and develop its language, culture and way of life.

Central and South America

10. Article 2 of the Constitution of Mexico declares that the right to self-determination of indigenous peoples is to be granted within a general framework of autonomy according to the Constitution and in a way that preserves national unity. The Constitution also provides that the law is to protect and promote the development of indigenous languages, cultures, customs, resources and specific forms of social organization. Members of indigenous groups are also guaranteed effective access to the judiciary.

11. The Constitution of Brazil contains a chapter on indigenous peoples' rights. Article 210 recognizes that a minimum curriculum should be established in primary schools in order to foster respect for cultural values and stipulates that primary education in indigenous communities is to ensure the use of the native tongue. According to article 231, there is to be recognition of the social organization, customs, languages, beliefs and traditions of indigenous peoples, in addition to their original rights to the lands that they traditionally occupy.

12. Article 2 of the Constitution of Ecuador recognizes indigenous languages as part of the national culture. Article 84 guarantees the dignity of indigenous peoples and nationalities. Article 242 indicates that indigenous regions are to be organized as territorially distinct, while article 57 accords indigenous peoples the right to exercise their own legal systems.

13. Indigenous peoples are recognized in the Constitution of the Plurinational State of Bolivia. Article 5 provides that indigenous languages are official languages together with Spanish and are to be acknowledged in a multilingual education system. Article 30 provides that indigenous peoples have the right to live according to their cultural identity, spiritual beliefs, customs and cosmologies. They also have the right to self-determination in the form of collective title to their lands, protection of sacred places, and respect and promotion of traditional knowledge, traditional medicine, rituals, symbols and clothing, and collective intellectual property.

Russian Federation

14. Article 69 of the Constitution of the Russian Federation guarantees the rights of indigenous minority peoples in accordance with universally recognized principles and norms of international law and international treaties and agreements signed by the Russian Federation.

North America

15. Section 35 of the Constitution of Canada recognizes and affirms existing aboriginal and treaty rights in Canada with regard to land claims. While the section does not specifically provide for indigenous self-government, Government policy

has considered that right to exist thereunder since 1995.[4] Section 25 operates to shield pre-existing aboriginal rights so that individual rights protected by the Constitution do not limit or otherwise invalidate aboriginal rights. In 2010, the Government endorsed the Declaration, recognizing that it had much in common with aboriginal and treaty rights enshrined in the Constitution.[5]

16. The Constitution of the United States of America established a tripartite federation of sovereign Indian tribes, state governments and a federal Government. The ninth and tenth amendments to the Constitution can be interpreted as protecting inherent self-government rights of Indian tribes. In 2010, after a multi-agency review of the Declaration and in consultation with tribal leaders and with outreach to other stakeholders, the Declaration was federally endorsed as being consistent with the existing recognition of Indian self-determination.[6]

Africa

17. Section 6 of the Constitution of South Africa recognizes the historically diminished use and status of indigenous languages, stipulating that the State must take practical and positive measures to elevate the use of those languages.

Asia

18. The Constitution of the Philippines is one of the most progressive constitutions in South-East Asia, with several specific provisions relating to indigenous peoples. Article XII (sect. 5) provides that the State is to protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being. Article XIV (sect. 17) provides that the State is to recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions and is to consider these rights in the formulation of national plans and policies. Article X (sect. 1) demarcates autonomous regions in the Cordilleras and in Muslim Mindanao.

19. There are special quotas stipulated in the Constitution of Malaysia for public office positions and licences for the indigenous peoples of Sabah and Sarawak States (arts. 153, 161, 161A 161B and 161E). Affirmative action provisions for indigenous peoples safeguard against discrimination (arts. 8 and 161A (5)).

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[4] Aboriginal Affairs and Northern Development Canada, "The Government of Canada's approach to the implementation of the inherent right and the negotiation of aboriginal self-government", 15 September 2010. Available from www.aadnc-aandc.gc.ca/eng/1100100031843/1100100031844.

[5] Centre for International Policy Studies, "Canada and UNDRIP: moving forward on indigenous diplomacy", 3 November 2011. Available from http://cips.uottawa.ca/canada-and-undrip-moving-forward-on-indigenous-diplomacy-2/.

[6] National Congress of American Indians, "International issues". Available from www.ncai.org/policy-issues/tribal-governance/international-issues.

B. Article 18 of the Declaration: right to have representative decision-making bodies

Arctic

20. Section 28 of the Constitution of Denmark allocates parliamentary positions to representatives of the Faroe Islands and of Greenland (a self-governing overseas administrative division of Denmark since 1979).

Central and South America

21. Article 7 of the Constitution of Colombia recognizes and protects the ethnic and cultural diversity of the State. Article 330 provides that indigenous territories are to be governed by councils formed and regulated in accordance with the customs of the community. Article 246 states that indigenous authorities may exercise their authority within their territorial jurisdiction in accordance with their own laws and procedures.

Asia

22. The Constitution of India provides for legislative positions for the members of scheduled tribes and castes (arts. 330 and 332), the establishment of autonomous district and regional councils (sixth schedule) and the reservation of places in public service for members of scheduled tribes and castes (art. 16 (4A)).

C. Article 19 of the Declaration: right to offer or withhold consent regarding State decisions affecting indigenous peoples

Central and South America

23. The Constitution of Ecuador recognizes the right of indigenous peoples to be consulted on the exploration and exploitation of natural resources on indigenous lands (art. 57 (7)) and the right to maintain, develop and manage their cultural and historical heritage (art. 57 (13)).

24. The Constitution of the Plurinational State of Bolivia states that prior consultation with indigenous peoples regarding matters that concern them is a State obligation, in particular with regard to the exploitation of non-renewable natural resources in indigenous territories (arts. 403 and 394).

Africa

25. According to article 36 of the Constitution of Uganda, minorities have the right to participate in decision-making processes and to have their views and interests taken into account in the making of national plans and programmes.

Asia

26. Apart from the granting of statehood and the establishment of district-level and regional-level councils in north-east India, the Constitution of India contains several other measures to protect the integrity of the north-eastern indigenous peoples referred to as "scheduled tribes". They include a provision preventing the federal legislature from legislating regarding land ownership or the social and religious practices of the indigenous peoples of Nagaland and Mizoram States

without the consent of the state legislative assembly concerned (arts. 371A and 371G) and a requirement to consult tribal members of legislative bodies prior to legislation concerning scheduled areas (fifth schedule).

27. The Constitution of Malaysia recognizes the autonomous authority of the States of Sabah and Sarawak with regard to land-related legislation (arts. 95B, 95D and 95E).

IV. Constitutional developments towards the recognition of indigenous rights

28. The present section focuses on the measures that countries are taking to incorporate the provisions outlined in the Declaration into their constitutions. Again, this list is not a definitive list of such attempts, but rather provides a global sample of current initiatives that are proving successful, partially successful or are still to be evaluated.

A. Article 3 of the Declaration: right to self-determination

Africa

29. Kenya is making various constitutional changes regarding the rights of indigenous peoples. A "marginalized community" is defined variously in the interpretation clause of the Constitution as a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole; an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on hunter or gatherer economy; and a community, whether nomadic or settled, that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole (art. 260). The Constitution now encompasses the concept of self-determination as outlined in the Declaration by recognizing the need or desire of those communities to preserve their unique cultures and identities (art. 174).

30. Article 7 obliges the State to promote and protect the diversity of language of the people of Kenya and to promote the development and use of indigenous languages. Article 11 recognizes culture as the foundation of the nation and obliges the State to promote all forms of cultural expression through, among others, literature, the arts, traditional celebrations, science, communication, mass media, publications and libraries. The State is also obliged to recognize the role of indigenous technologies in the development of the nation, to promote the intellectual property rights of the people of Kenya and to enact legislation that will ensure that communities receive compensation or royalties for the use of their cultural products. Legislation should also be enacted to recognize and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by communities.

31. Article 61 of the Constitution categorizes land as public, community-owned or private. Article 63 states that community land is to be vested in communities identified on the basis of ethnicity, culture or other similar attributes. Such land includes that lawfully held in the name of group representatives, that lawfully

transferred to a specific community and any other land declared to be community land by an act of Parliament. It also includes land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines, and ancestral land and land traditionally occupied by hunter-gatherer communities. There are several caveats. For example, community land is not to be disposed of or used except under the terms of legislation. Furthermore, under article 66, the State may still regulate the use of any land in the interests of defence, public safety, public order, public morality, public health or land-use planning.

Asia

32. Until it was amended in 2011, there were no specific references to the indigenous peoples of Bangladesh in the national Constitution. Their presence was only indirectly acknowledged therein through the affirmative action provisions on special measures for what were termed the "backward section of citizens" (arts. 14, 28 (4) and 29 (3)). Following the fifteenth amendment, the Constitution mandates that the State is to take steps to protect and develop the unique local culture and traditions of the tribes, minor races, ethnic sects and communities.

33. The status of indigenous peoples in the Constitution of Pakistan, including from 1947 to 1971 when Bangladesh was part of Pakistan, has varied. From 1947 to 1962, the Chittagong Hill Tracts and the greater Mymensingh area were included in the list of excluded areas, pursuant to section 92 of the Government of India Act 1935. Excluded areas were governed under special regulations and laws of general national application were extended to these areas only sparingly or in modified form. The special regulations recognized the rule of traditional rulers, chiefs and headmen and their invoking of customary law in their respective areas of jurisdiction. Entry into traditional lands and acquisition of land rights by outsiders was forbidden or restricted, and money-lending and trading introduced by outsiders was also strictly regulated.[7]

34. From 1947 to 1971, the partially excluded areas, such as in Mymensingh, Bangladesh, and in Jharkhand, Orissa, Madhya Pradesh and several other states of peninsular India, had a larger number of general laws applied to them, with a stronger role played by the central Government. Correspondingly, the role and status of the traditional indigenous institutions in those areas were less prominent than in the excluded areas. During the British rule of India (including present-day Bangladesh, India and Pakistan), all those areas enjoyed the status of exclusive areas, given that parts of those regions were (and still are) populated primarily by indigenous peoples (including in the States of Arunachal Pradesh, Meghalaya, Nagaland and Mizoram). Earlier, the excluded and partially excluded areas were regarded as "backward tracts" (Government of India Act 1915, sect. 52A) and, yet earlier, as "scheduled districts" (Scheduled Districts Act 1874).

35. In the Constitution of 1962, excluded areas were redefined as tribal areas. The greater Mymensingh area was dropped from the list of tribal areas (although, it should be noted, by that time the indigenous people of the area had been reduced to a minority on account of unrestricted immigration), but the Chittagong Hill Tracts were retained, along with Dir, Chitral and several other places now located in

[7] Zainul Aidin Ahmad, "Excluded areas under the new Constitution", Congress Political and Economic Studies, No. 4 (Allahabad, Ashraf, 1937).

Khyber Pakhtunkhwa Province, Pakistan. Through a constitutional amendment in 1964, the tribal area status of the Chittagong Hill Tracts was revoked, in violation of article 223 of the Constitution, which guaranteed consultations with the representatives of an area prior to removal of such a status. The Chittagong Hills Tract became part of Bangladesh when the country gained independence in 1971. The Chittagong Hill Tracts Accord, signed between the largest regional party of the indigenous peoples, Parbatya Chattagram Jana Sanghati Samiti, and the Government of Bangladesh in 1997, revived a measure of autonomy and self-rule, but not the special constitutional status of the region. The absence of express constitutional safeguards has led to the minoritization of the indigenous peoples in their ancestral homeland, including through population transfer of non-indigenous settlers, and has visibly weakened their self-government system, their land and resource rights, and their political, social and cultural integrity.[8]

36. Nepal is in the process of adopting a new constitution after having converted from a monarchy to a republic. Its interim draft constitution includes provisions for a degree of self-determination with regard to indigenous tribes.

Pacific

37. For decades there has been advocacy in Australia for recognition of indigenous peoples in the Constitution, given that they are not currently recognized. Sections 25 and 51 (xxvi) are the target of this advocacy. Section 25 allows states to exclude certain races from voting and has previously been used to pass laws excluding Aboriginal people.[9] Section 51 (xxvi) is the source of the power that enables Parliament to make laws for Aboriginal people. The section permits the passing of laws with regard to people of any race for whom it is deemed necessary to make special laws. This power can therefore support laws that are beneficial or adverse. Given that Australia has no bill of rights, the federal Government has essentially unfettered power to pass racially discriminatory laws that can have a negative impact on indigenous peoples. Accordingly, constitutional entrenchment of a prohibition on racial discrimination is viewed as being central to indigenous recognition in Australia:

> Elimination of racial discrimination is inherently related to Indigenous recognition because Indigenous people in Australia, more than any other group, suffered much racial discrimination in the past. So extreme was the discrimination against Indigenous people, it initially even denied that we existed. Hence, Indigenous Australians were not recognised. Then, Indigenous people were explicitly excluded in our Constitution. Still today, we are subject to racially targeted laws with no requirement that such laws be beneficial, and no prohibition against adverse discrimination.[3]

38. Both the current Government and the opposition are committed to pursuing recognition of Aboriginal and Torres Strait Islander peoples in the Constitution.[10] In

[8] Jenneke Arens and Kirti Chakma, "Bangladesh: indigenous struggle in the Chittagong Hill Tracts", 2002. Available from www.conflict-prevention.net/page.php?id=40&formid=73&action=show&surveyid=14.

[9] Anthony Gray, "The guaranteed right to vote in Australia", *Queensland University of Technology Law and Justice Journal*, vol. 7, No. 2 (2007).

[10] George Williams, "Pathway to referendum success is now clear", *The Sydney Morning Herald*, 17 January 2012. Available from www.smh.com.au/opinion/politics/pathway-to-referendum-success-is-now-clear-20120116-1q2yk.html.

2010, the Prime Minister established an expert panel to consider options for a referendum on a constitutional amendment for such recognition. The panel comprised indigenous and non-indigenous experts who consulted the Australian people and Aboriginal and Torres Strait Islander communities throughout 2010 and recommended a number of amendments to the Constitution, including that sections 25 and 51 (xxvi) should be repealed and that a new section 51A should be inserted to recognize Aboriginal and Torres Strait Islander peoples and to preserve the Government's ability to pass laws for their benefit. In addition, the panel recommended the insertion of a new section 116A, banning racial discrimination, and of a new section 127A, recognizing that Aboriginal and Torres Strait Islander languages were the first tongues of Australia, while confirming that English is the national language.[3]

39. New Zealand is one of only three countries without a written constitution, the others being Israel and the United Kingdom of Great Britain and Northern Ireland. Although New Zealand inherited its Constitution from the United Kingdom, the two systems have evolved differently. The sources of the Constitution of New Zealand include the prerogative powers of the Queen, the Constitution Act 1986, the New Zealand Bill of Rights Act 1990, decisions of the courts, the Treaty of Waitangi and unwritten conventions regulating how the relationships between these sources work. The Treaty of Waitangi was an agreement entered into between the British Crown and the indigenous Maori peoples of New Zealand in 1840. The English-language version cedes sovereignty, whereas the Maori-language version does not. The principles of the Treaty are often referred to in New Zealand legislation (see, for example, the Conservation Act 1987, sect. 4, and the State-Owned Enterprises Act 1986, sect. 9) and in policy documents (such as the New Zealand Disability Strategy 2001, which is expressly consistent with the relevant principles of the Treaty), rather than the text of the Treaty itself. Although recognition by the courts of the Treaty as a constitutional document indicates some recognition of indigenous rights in the Constitution, under the current constitutional arrangement any recognition of indigenous peoples' rights is subordinate to the central doctrine of parliamentary supremacy.

B. Article 18 of the Declaration: right to representative decision-making bodies

Africa

40. On 4 August 2010, 68 per cent of eligible Kenyans voted to support the proposed new constitution, including many from indigenous communities[11] The new Constitution provides a clean break from the past with several avenues for the pursuit and strengthening of indigenous peoples' personal and collective rights. Kenya is now a presidential democracy with a two-tier parliament that comprises a senate and a parliament. The system of government is a devolved system, with indigenous peoples being granted authority over many of the 47 new counties (with elected governors). This will enable them to make decisions that directly affect them. In the counties in which indigenous peoples will be the minorities, special

[11] Tim Murithi, "Kenya's constitutional renewal: a post-referendum analysis". Available from www.currentanalyst.com/index.php/conflictsregional/136-kenyas-constitutional-renewal-a-post-referendum-analysis.

provisions have been made to accommodate the interests of minorities in such situations. Chapter IV of the Constitution (arts. 19-59) recognizes a number of rights and freedoms of indigenous peoples. Article 56 specifically provides for affirmative action for minorities and marginalized groups through programmes designed to ensure that they participate and are represented in governance and other spheres of life and are provided with special educational and economic opportunities with access to employment.

Asia

41. The interim Constitution of Nepal provides for proportionate representation of indigenous people in legislative bodies (arts. 45 and 64), the formation of commissions, including on indigenous peoples and minority groups (art. 154) and recognition of the customary laws of indigenous peoples and of language and cultural rights (art. 17). The extent to which those measures, including the recognition of autonomy through the formation of ethnic states, will ultimately be retained or enforced remains to be seen, however.

Pacific

42. The Maori electorates, also known as Maori seats, are a special category of electorate that gives reserved positions to representatives of Maori in the Parliament of New Zealand. They are treasured as a unique constitutional arrangement. The Maori electoral roll ensures an indigenous Maori perspective in the legislative process. The seats remain subject to controversy, however, in that it has been suggested that they are undemocratic and afford special status to Maori. Equality and multiculturalism arguments ignore Maori as indigenous peoples and partners under the Treaty of Waitangi. As part of the Relationship Accord and Confidence and Supply Agreement between the National Party and the Maori Party, signed on 16 November 2008, it was agreed to establish a group to consider constitutional issues pertaining to the indigenous peoples of New Zealand. In August 2011, a constitutional advisory panel was mandated to lead a public discussion on constitutional issues and report back to the Government by September 2013. The relevant matters that this group is considering include the size of Parliament and Maori representation; Maori electoral participation; Maori seats in Parliament and local government; and the role of the Treaty of Waitangi within constitutional arrangements.

C. Article 19 of the Declaration: right to offer or withhold consent regarding State decisions affecting indigenous peoples

Africa

43. The Constitution of Kenya charges the State with protecting the intellectual property rights of indigenous peoples and enhancing indigenous knowledge regarding biodiversity and genetic resources, in addition to encouraging public participation in the management, protection and conservation of the environment (art. 69).

Pacific

44. In February 2011, a working group on constitutional transformation was established in New Zealand to engage with Maori and to work on developing a

model constitution for New Zealand based on Maori protocol and culture, the 1835 Maori Declaration of Independence and the Treaty of Waitangi. The group has agreed that the process must be "for Maori, by Maori" and that it will invite meetings with the Government only once a satisfactory model for constitutional transformation has been agreed to by Maori representatives.[12] The group will invite Maori to bring their thoughts and ideas on what they believe their ancestors anticipated when they agreed to the Declaration of Independence and the Treaty of Waitangi.

45. The unwritten Constitution of New Zealand does not recognize any inherent rights of Maori as indigenous peoples. The group recommends that any constitutional transformation include and recognize the fundamental rights of Maori as indigenous peoples in accordance with the Declaration.[12]

V. Conclusions and recommendations

46. **Indigenous peoples should be recognized in national constitutions as such, including with specific mention of their rights. States that do not currently recognize indigenous peoples or indigenous rights in their constitutions should move towards a constitutional reform process in consultation with indigenous peoples.**

47. **States should entrench the Declaration in national constitutions and adopt it as the framework for the development and implementation of the rights of indigenous peoples, with a special focus on article 3.**

48. **The African Commission on Human and Peoples' Rights should support the action of its Working Group of Experts on the Rights of Indigenous Populations/Communities in Africa by increasing its budget.**

49. **States should engage in dialogue with one another in order to gain greater insight into the importance of recognizing the rights of indigenous peoples.**

50. **Civil society should be more active in advocating the implementation of the Declaration.**

51. **States should mobilize resources in order to carry out awareness campaigns and train decision makers, United Nations bodies, civil society organizations, indigenous peoples and other stakeholders in the constitutional recognition of indigenous rights.**

52. **States should revoke existing constitutional measures that discriminate against indigenous peoples. They should include protective safeguards, in particular with regard to racial non-discrimination, in their constitutions in consultation with the indigenous peoples of their countries.**

53. **States should adopt organic and enabling legislation, and corresponding executive, policy and programmatic action, to implement constitutional provisions that safeguard the rights of indigenous peoples, in consultation with their indigenous peoples.**

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[12] Margaret Mutu and Moana Jackson, "Iwi to hold own constitutional review", 15 December 2010. Available from www.converge.org.nz/pma/cr151210.htm.

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Follow-up to the recommendations of the Permanent Forum

Analysis of health, education and culture prepared by the secretariat of the United Nations Permanent Forum on Indigenous Issues

Summary

The present report provides an analysis of the implementation of the recommendations of the Permanent Forum on Indigenous Issues on health, education and culture based on reports received from Governments, United Nations agencies, intergovernmental bodies, non-governmental organizations and indigenous peoples' organizations.

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I. Introduction

1. The present report seeks to provide an analysis of the implementation of the recommendations of the Permanent Forum on Indigenous Issues reached at its second to eleventh sessions on health, education and culture. While the report does not constitute a global analysis of the health, education and cultural issues affecting indigenous peoples around the world, it does provide information on the consideration and implementation of those issues at the international and national levels.

2. Health, education and culture are areas that require shifts in the current paradigms and different approaches in the formulation of conceptual frameworks, policies and guidelines. A better understanding of indigenous peoples' world views and their involvement in policy and decision-making will result in improved outcomes. An example is in the area of education, where the authoritarian approach of most educational systems imposed on indigenous peoples did not take into consideration the importance of cultural values and emphasized integration of indigenous peoples into the national mould. Most indigenous students failed to adapt to these systems and, as a result, indigenous peoples have high illiteracy rates and poor educational qualifications. The lack of education means that many indigenous peoples can expect low wages, if they can find jobs at all.

3. The alarming deterioration of health conditions within indigenous communities continues to be a major issue for the Permanent Forum. Even though a number of indigenous communities are provided with basic health services, these services are still inadequate and do not cover the needs of the community. The absence of adequate medical facilities is often seen as due to the remoteness of indigenous communities and the reluctance of certain indigenous peoples to use the available health centres. Further, health practitioners often view patients' culture as a barrier to care. Therefore, awareness-raising and the delivery of culturally appropriate health care require ongoing work. Further, there is a need for practitioner competencies in specific areas of cultural knowledge, and specific skills in intercultural communication.

4. For indigenous peoples, cultural belief systems and world views are based on their sacred relationships to each other and Mother Earth, which have sustained them through time. The contributions and participation of traditional knowledge holders, indigenous women and youth are well known and well regarded in indigenous communities. Culture is a way of being and living with nature, underpinning indigenous peoples' values, moral and ethical choices. Indigenous peoples' survival is dependent on their cultures, including their social, material and spiritual strength. Indigenous peoples believe that culture is the most fundamental dimension of sustainable development.

II. Analysis of the recommendations of the Permanent Forum

A. Health

5. Indigenous peoples have a holistic and collective view of health and well-being, one which involves all members of the community and encompasses physical, social, mental, environmental and spiritual dimensions. Health is one of

the six substantive mandated areas of the Permanent Forum and covers a wide range of issues, such as access, and especially indigenous women's access to comprehensive, community-based and culturally appropriate health-care services, health education, adequate nutrition and housing; health of indigenous children, youth and women; indigenous peoples' free prior and informed consent to medical treatment; incidence of mortality and morbidity; mental health; sexual and reproductive health; traditional medicine and health systems.

6. In addition, the Second Decade of the World's Indigenous People has included health as one of the priority areas where action is needed in several areas, namely, HIV/AIDS, malaria and tuberculosis; practices which have negative impacts on health, including female genital mutilation, child marriages, violence against women, youth and children; alcohol and drug abuse; environmental degradation, including use of indigenous peoples' lands for military testing, toxic by-product storage, nuclear and industrial exploitation and contamination of water and other natural resources; health problems connected to forced relocation, armed conflicts, migration, trafficking and prostitution.

7. Health issues are also incorporated in a number of articles of the United Nations Declaration on the Rights of Indigenous Peoples. Articles 21 to 24 outline the rights of indigenous peoples to the enjoyment of the highest attainable standard of physical and mental health, and other related rights, such as the rights to the improvement of their economic and social conditions, including in the areas of education, employment, vocational training and retraining, housing, sanitation and social security; further, they outline that indigenous peoples are actively involved in developing and determining health, housing and other economic and social programmes affecting them and the right to administer such programmes through their own institutions; to maintain traditional medicines and health practices, including the conservation of vital medicinal plants, animals and minerals; and to access all social and health services. States are called upon to pay particular attention to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of the United Nations Declaration. In addition, specific measures should be taken to ensure that indigenous peoples enjoy the full protection and guarantees against all forms of violence and discrimination, and to ensure continuing improvement of their economic and social conditions.

8. Between its first and tenth sessions, the Permanent Forum made recommendations on health that covered a range of health issues, such as the human right to health and to culturally appropriate health care; social and economic determinants of health; non-communicable diseases, including diabetes, mental health and suicide; nutrition and food. Also covered were indicators and data collection; health in conflict situations; health-related aspects of the Millennium Development Goals, such as child mortality and maternal health (Goals 4 and 5), and HIV/AIDS (Goal 6).

Intercultural approach to health

9. The Permanent Forum made 13 recommendations on the promotion of a holistic and intercultural approach to health, including traditional medicine and health practices. The majority of recommendations recognize the significance of incorporating an indigenous understanding of health and well-being for the

development of policies and guidelines on health care at the national and international levels. Recommendations request States and the United Nations system to incorporate the principle that health is a fundamental human right, and to foster a rights-based approach to health, including the right to culturally sensitive services.

10. At its fifth session, the Permanent Forum requested that all United Nations entities incorporate a cultural perspective into health policies, programmes and services, with specific reference to reproductive health services. In several recommendations, the Forum also highlighted the need to re-evaluate the role of indigenous traditional health practitioners, including midwives, as cultural brokers between the health system and the indigenous communities' values and world views. Their role can be significant in several areas, such as treatment of HIV/AIDS, assistance to indigenous women, and valorization of traditional medicine. Recommendations also requested studies on how health services that are sensitive to traditional health-care practices may be provided to indigenous peoples who do not have access to direct health care.

11. While recommendations calling for studies, as requested by the Permanent Forum, have yet to be initiated, the implementation of other recommendations is ongoing. At the country level, efforts to incorporate a culturally sensitive approach to health have achieved some results, especially in the area of maternal health. At the international level, the Permanent Forum has applauded the United Nations Children's Fund (UNICEF) and the United Nations Population Fund (UNFPA) for applying culturally sensitive approaches to health delivery, but it also stressed that these require more effort, and sharing experiences and best practices is of paramount importance, especially with other agencies working primarily in the field of health (see E/2007/43, para. 62).

Non-communicable diseases and mental health

12. Since its second session, the Permanent Forum has addressed the important issues related to the high rate of mental health diseases, and specifically the high incidence of suicide in indigenous communities, especially among indigenous youth. The Permanent Forum has made repeated calls for action to address the issue of suicide. One of the recommendations by the Forum was undertaking a study on the prevalence and causes of suicide among indigenous youth and encouraged efforts to address the promotion of health, including mental health and wellness, on the basis of a cultural-based approach (E/2003/43, para. 82). Other recommendations included the organization of a workshop on policies and best practices of indigenous youth and children on the prevention of suicide; and a meeting to assess the root causes of suicide of indigenous youth in order to formulate preventive strategies (E/2004/43, para. 96, and E/2007/43, para. 65). However, implementation of these recommendations remains ongoing.

13. At its seventh and eighth sessions, the Permanent Forum expressed concerns about the increasing incidence of tuberculosis among indigenous peoples and that a greater focus on non-communicable diseases is needed. Considering the staggering prevalence of diabetes among indigenous peoples, the Permanent Forum has made recommendations calling for culturally appropriate health services, with a focus on health education as a necessary component of any preventive strategy. The Permanent Forum has recognized that diabetes is linked to a host of other health problems, such as growing malnutrition and obesity rates that can seriously affect

both indigenous women's and men's reproductive health, which impacts their children. The Permanent Forum has called upon States and the United Nations system to undertake studies on the prevalence of such diseases among indigenous peoples, and the development of joint strategies to address diabetes and related non-communicable illnesses. The absence of indigenous peoples in creating relevant policies on health-related issues was evident when indigenous representatives were not included in the High-level Meeting of the General Assembly on the prevention and control of non-communicable diseases, held in September 2011.

14. Overall, the recommendations addressed to States and the United Nations system have been limited in number and scope, compared to the gravity and the high incidence rate of non-communicable diseases and mental illnesses in indigenous communities. Responses to the recommendations have been scarce and have not brought about significant changes, either in terms of collecting and analysing data specifically related to indigenous peoples, or in terms of implementation of measures for the prevention and control of such diseases. In addition, there are gaps in the implementation of the Permanent Forum's recommendations in addressing the economic and social determinants of non-communicable diseases, such as urbanization and changing lifestyles, lack of access to traditional lands and livelihoods, changing nutrition path and food habits.

15. The Permanent Forum made five recommendations that specifically targeted issues linked to food and nutrition. The Forum's recommendations included a study on food security, subsistence agricultural practices and health; reiterating the right to adequate and nutritional foods and clean drinking water and the right to maintain traditional subsistence foods. The Permanent Forum also called for the recognition of the right to food and nutritional security and the sustainable production and consumption of healthy and nutritious foods. Recommendations to United Nations agencies were made to base their interventions on reducing malnutrition among indigenous peoples on assessments of the structural causes, including access to lands and availability of natural resources (E/2007/43, para. 64). While implementation of these recommendations is ongoing, the World Food Programme did report that there is a proposal to produce locally fortified complementary foods based on indigenous nutritious products. In addition, the Permanent Forum held a half-day discussion on the theme "The rights of indigenous peoples to food and food sovereignty" at its eleventh session in 2012 to address these major concerns (E/2011/43).

Health of indigenous children, youth, women; sexual and reproductive health

16. Recommendations on protecting the right to health of indigenous children, youth and women have been a major focus of the Forum. Most of these recommendations have been addressed to UNFPA, UNICEF and the World Health Organization (WHO). The majority of recommendations call upon States and United Nations entities to give special emphasis to issues of infant mortality, reproductive rights, sterilization, violence and domestic abuse, and addiction, as well as the collection of data relating to these issues (E/2002/43, para. 10; E/2003/43, para. 64). In some cases, the urgency to address the specific needs of children and youth has been recognized, for example in initiatives such as the Healthy Environments for Children Alliance (E/2003/43, para. 79). Since its first session, the Permanent Forum has requested technical seminars with a view to expanding global programmes on immunization and vaccination to indigenous communities

(E/2002/43, para. 11). The Permanent Forum has also called for the preparation of a report on indigenous children who have limited or no access to direct health care. The implementation of these recommendations is still ongoing. Moreover, the importance of birth registration for indigenous children has been highlighted by the Forum as having a direct link to allocation of health services (E/2007/43, para. 66). In this regard, States have reported on efforts made to increase the free and universal civil registration of indigenous peoples, in cooperation with organizations such as UNICEF, UNFPA and in some instances, with the Inter-American Development Bank.

17. With respect to the health of indigenous women, the Permanent Forum has focused its attention on health-related aspects of violence, including war-related violence and domestic violence. At its third session, the Forum focused on indigenous women's right to health (E/2004/43, para. 89) and addressed the following priority areas: ensuring universal access to culturally acceptable and appropriate health-care services; curbing programmes of forced sterilization and abortion, which can constitute ethnic genocide; developing innovative strategies in health services to women informed by indigenous concepts of health and wellness; supporting comprehensive, community-based primary health services and health education, incorporating traditional components, such as the employment of traditional health practitioners and midwives.

18. While implementation of the Permanent Forum's recommendations at the national level by States is ongoing, at the regional level, the Pan-American Health Organization (PAHO) reported significant progress in the Latin America and the Caribbean region through the "Health of Indigenous Peoples", which adopts an intercultural approach and is incorporating indigenous practices, therapies and medicines in primary health care. In addition, UNICEF has been very active in supporting Governments and indigenous communities to develop and implement local and national intercultural public policies for prenatal and postnatal care. UNFPA has been implementing intercultural reproductive health programmes in several countries in the Latin America and the Caribbean region. Some United Nations entities have established functioning programmes and developed good practices, mainly in the Latin America and the Caribbean region. **Successful programmes need to be extended to other regions and best practices should be shared in order to expand achievements. Despite the number of recommendations that have been adopted on indigenous women's sexual and reproductive health, there is an information gap regarding whether studies were undertaken and workshops organized. The health needs of youth, especially of indigenous girls, should be considered as a priority.**

Environment and health

19. The health of indigenous peoples can be adversely affected by external factors occurring on indigenous lands and territories, such as pollution, climate change and the presence of conflicts of which indigenous peoples are, in the majority of cases, the victims. At its second session in 2003, while recommending that States ratify the Stockholm Convention on Persistent Organic Pollutants, the Permanent Forum also recommended that the Special Rapporteur on toxic waste conduct a workshop on the impact of persistent organic pollutants and pesticides on indigenous peoples. There have been some meetings dealing with the impact of climate change on the health of indigenous peoples, and some information is available on the health effects on

indigenous peoples caused by uranium mining, dumping of radioactive waste and nuclear testing. However, the Permanent Forum is of the view that a consolidated report on these issues is still required (E/2008/43, para. 87; E/2009/43, para. 77).

20. **Concerned at the wars occurring in many regions, including the African continent, the Permanent Forum also recommended a meeting aimed at evaluating the negative effects of conflicts on the health of indigenous peoples (E/2007/43, para. 68). It is imperative to address this issue as soon as possible.**

Millennium Development Goals

21. The Permanent Forum devoted its fourth (2005) and fifth (2006) sessions to an analysis of the Millennium Development Goals from the perspective of indigenous peoples. Indigenous peoples stressed the urgency of redefining approaches to the implementation of the Millennium Development Goals in order to include their concerns and world views and identified the lack of disaggregated data as an obstacle to assessing the implementation of the Millennium Development Goals. HIV/AIDS (Millennium Development Goal 6) is one of the challenges faced by indigenous peoples. The Permanent Forum has sought UNAIDS involvement and engagement on these issues, including the preparation of a study on AIDS impacting indigenous children and infants. The Permanent Forum also requested that UNAIDS include indigenous organizations and health providers in community-based culturally appropriate HIV/AIDS programmes (see E/2006/43, paras. 18, 36, 37).

22. In 2009, Health Canada, in collaboration with UNAIDS and the Public Health Agency of Canada, hosted an International Policy Dialogue on HIV/AIDS and Indigenous Peoples in Ottawa, Canada. The dialogue provided a platform to discuss the impact of HIV/AIDS on indigenous peoples, and to explore a way forward in terms of research, policy and programme development. The final report that emerged out of that dialogue states that the relationship between HIV and indigenous peoples has not received due international attention, despite the fact that indigenous peoples have particular vulnerabilities to acquiring HIV.[1]

Other issues

23. In response to a specific recommendation calling for the development of participatory health research guidelines and the application of free, prior and informed consent (E/2003/43, para. 69), WHO issued a publication in 2003 which emphasized that health research involving indigenous peoples needs to be organized, designed and carried out in a manner that takes into account cultural differences, is based on mutual respect and is beneficial and acceptable to all parties.

24. A large number of recommendations focused on the need to gather data on indigenous peoples' health. The availability of data has continuously been seen by the Permanent Forum as the precondition for designing programmes and services for indigenous peoples based on the criteria of ethnicity, cultural and tribal affiliation and language (ibid., para. 70). Despite many recommendations, the lack of disaggregated data continues to be one of the main challenges in the area of health.

[1] http://data.unaids.org/pub/Report/2010/2010_hiv_indigenous_peoples_en.pdf.

25. The Permanent Forum has also called upon States and United Nations entities to develop and implement right-to-health indicators, to develop benchmarks and timelines, in order to ensure that indigenous peoples' right to health is progressively realized, and to better assist in the monitoring and evaluation of outcomes at national and international levels. Implementation of right-to-health indicators is ongoing.

26. The Permanent Forum has stressed the need to examine the disparity of health standards for indigenous peoples (E/2004/43, para. 91) and assessments on the structural causes of health problems. The Permanent Forum also considers that access to land and availability of natural resources are all part of indigenous peoples' health issues and that there is a need to respect indigenous peoples' models of development (E/2007/43, para. 64). Addressing these important issues requires a tremendous effort from all parties concerned.

27. Table 1 provides a breakdown by Permanent Forum session of the number of recommendations made and implemented concerning education.

Table 1
Implementation of the recommendations of the Permanent Forum on health

	Recommendations		
Permanent Forum session	*Total*	*Implemented (ongoing or complete)*	*Not yet implemented or reporting not received*
First	7	2	5
Second	20	11	9
Third	7	5	2
Fourth	4	3	1
Fifth	6	6	–
Sixth	10	8	2
Seventh	2	1	1
Eighth	4	1	3
Ninth	0	–	–
Tenth	4	3	1
Total	**64**	**40**	**24**

Conclusions

28. Health is a major issue for the Permanent Forum especially due to the lack of understanding of how health issues impact on indigenous peoples in terms of their identity, cultural, social, economic and political rights. The rights to health, education and cultural identity, have to be understood as an economic and social and human rights' issue. In addition, they are necessary preconditions for indigenous peoples to pursue their collective development. Health and well-being are at the core of indigenous peoples' right to life, their right to dignity and well-being.

B. Education

29. Historically, many indigenous peoples consider the education system to be a means of assimilation. For example, indigenous peoples argue that the historic purpose of boarding schools was to assimilate indigenous peoples into the dominant society in which they lived. Often a stated rationale for boarding schools was that they provided a means for indigenous peoples to achieve status in the dominant society.[2] Boarding schools in many regions of the world signified that indigenous children were often not given the educational skills necessary to assimilate into the higher echelons of the larger society. Rather, they were trained to do either domestic work or manual labour.[3]

30. Many indigenous peoples recognized that education is an important development tool and are mindful of the indigenous view that education is a lifelong process. The important connection between education and indigenous peoples includes the enrichment of communities and vibrant economies. However, educational attainment and completion rates remain an area of concern and are partially explained by multiple barriers that limit access to, and persistence in, completing education. Therefore, innovative programming for student retention and support is required to help learners overcome challenges.

31. Indigenous peoples enjoy fewer years of schooling than their peers, which often does not take their cultural backgrounds into consideration and they have less access to education and vocational training than the majority population. In addition, their traditional educational systems may not be recognized at the same level as the mainstream system if at all taken into consideration. While indigenous women and girls are crucial traditional knowledge holders, in many cases, they have been particularly disadvantaged in the education systems. Key issues for indigenous peoples and education include ensuring that (a) their cultures and histories are accurately portrayed in curricula; (b) they have full and equal access to education; (c) they have access to teaching in their own languages and indigenous schools and universities.

32. Articles 11 to 15 of the United Nations Declaration on the Rights of Indigenous Peoples have enshrined education as a key issue. Article 11 and 12 cover indigenous peoples' right to access and practice of their culture and their spiritual and religious traditions, customs and ceremonies. Article 13 covers the right to know, use and pass on to future generations their distinct languages, histories and oral traditions. More specifically, articles 14 and 15 concern the rights to establish and control their own educational systems and institutions, the right of indigenous individuals to all levels and forms of education of the State without discrimination; access to education; dignity and diversity appropriately reflected in curricula; that States must ensure effective consultation and cooperation with indigenous peoples

[2] D. W. Adams, *Education for Extinction*, Topeka, University of Nebraska Press, 1995; T. Fitzgerald, *Education and Identity*, Wellington, New Zealand Council for Educational Research, 1977; R. Manne, "Aboriginal Child Removal and the Question of Genocide, 1900-1940, in A. Dirk Moses (ed.) *Genocide and Settler Society*, New York, Berghahn Books, pp. 217-243; Commonwealth of Australia, *Bringing them Home*, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, 1997.

[3] "Indigenous Peoples and Boarding Schools: A Comparative Study", prepared by Andrea Smith, for the secretariat of the United Nations Permanent Forum on Indigenous Issues (E/C.19/2009/CRP.1).

to eliminate discrimination and to promote tolerance, understanding and good relations between indigenous peoples and other segments of society. In addition to the Declaration, there are several international instruments and declarations that form the basic framework for the provision of quality education for indigenous peoples, the recognition of their rights to education, including those pertaining to access to education. The instruments and declarations include the Convention against Discrimination in Education (1960), ILO Convention No. 169, articles 26 to 31, and the Convention on the Rights of the Child, articles 28 to 30.

33. At its second to tenth sessions, the Permanent Forum made a total of 42 recommendations covering a range of issues pertaining to indigenous peoples and education. Specifically, issues covered included bilingual and intercultural education, resource mobilization for indigenous education, primary education including Goal 2 of the Millennium Development Goals, which is achieving universal primary education. Other issues covered included quality of education and curricula, participation, the right to education, boarding schools, indigenous universities, access to education, and inequalities.

Support to bilingual and intercultural education

34. The Permanent Forum has continuously focused on indigenous peoples' right and access to bilingual and intercultural education. From its second to tenth session, 10 recommendations were made on this topic. The majority of the recommendations were requests for support from States and the United Nations system for intercultural and bilingual education programmes. Several responses to the recommendations were received from (a) UNICEF reporting, inter alia, on a programme on cultural and linguistic diversity in education; (b) the United Nations Educational, Scientific and Cultural Organization (UNESCO) reported that continued collaboration was taking place with Ministries of Education at the country-level to promote education policy reform in favour of indigenous peoples, including support for intercultural education strategies, and promoting the education for indigenous girls; and (c) Canada noted its continued collaboration with First Nations and that the number of First Nations schools increased by 40 per cent from 1992-1993 to 2002-2003.

35. In addition, at its second session the Permanent Forum recommended that States conduct programmes for indigenous peoples to enhance cultural diversity. Canada reported that its initiatives in this regard included establishing a National Working Group on Education with 15 aboriginal members to provide advice to the Minister on how to narrow the education gap between First Nations and other Canadian students. In response to a recommendation that UNESCO, the Convention on Biological Diversity, UNICEF and other relevant United Nations agencies convene an expert meeting to explore intercultural education, the secretariat of the Convention on Biological Diversity reported that although the convention works on community education, public awareness and capacity-building, it does not have a mandate to pursue bilingual and intercultural education in the context of teaching in mother tongue indigenous languages.

Resource mobilization for indigenous education

36. The Permanent Forum made seven recommendations from its second to tenth session relating to funding of indigenous education programmes and activities.

Mainly, the Permanent Forum called for continuous and new possibilities of resource mobilization for indigenous education, from both United Nations agencies and Governments. Specifically, several recommendations were made to the International Fund for Agricultural Development (IFAD) to, inter alia, (a) support intercultural and bilingual education programmes and to promote the right to education, with an emphasis on indigenous children, and that direct financial assistance to indigenous educational institutions should be considered; and (b) continue to operate the World Bank's Grants Facility for Indigenous Peoples. IFAD responded in turn by listing supported projects; and that in addition to its operational and advocacy work, it would concentrate its efforts on developing the IFAD principles of engagement with indigenous peoples and to operate and mobilize resources for the "indigenous peoples' assistance facility", which was transferred from the World Bank to IFAD in 2006.

37. The Permanent Forum made a recommendation to UNESCO and other relevant agencies that focused specifically on requesting more funds, through appropriate means, for activities such as facilitating educational exchanges between indigenous peoples and others in order to make contributions to the cultural diversity and to preserve indigenous peoples' cultural heritage. In response, UNESCO advised that at least 20 activities with corresponding budgetary allocations included indigenous peoples as a central focus of their action. Specifically addressed to the United States of America and Canada, the Permanent Forum urged the two Governments to financially support indigenous community education systems and their efforts to protect and perpetuate indigenous languages, on par with their dominant languages. In response, the United States of America stated that various efforts regarding indigenous peoples and the Millennium Development Goals had been undertaken and that it had prioritized funding for Indian education to support the attainment of Millennium Development Goal 2, to achieve universal primary education.

Millennium Development Goal 2: Achieve universal primary education

38. The fourth session of the Permanent Forum was dedicated to Millennium Development Goal 1: Eradicate extreme poverty, and Millennium Development Goal 2: Achieve universal primary education. Of the eight recommendations made by the Permanent Forum on Goal 2, six were made at its fourth session. All six recommendations except for one are addressed to States and focus primarily on (a) the right to access to primary education, and (b) the quality and cultural appropriateness of primary education for indigenous peoples. Despite the numerous recommendations on Goal 2 and indigenous peoples, few States responded directly to the queries raised by the Permanent Forum.[4] From United Nations agencies, several entities responded:

(a) On the issue of recognizing the right to education as a key instrument for achieving equitable development and respect for cultural development, the Office of the High Commissioner for Human Rights (OHCHR) noted the work by the Inter-Agency Support Group on Indigenous Issues and reported on an expert seminar on indigenous peoples and education which was organized in cooperation with UNESCO;

[4] Responses included a report by Argentina (E/C.19/2006/4).

(b) The International Labour Organization (ILO) reported on the need to share experiences on education that represent best practices at the primary or community levels and that its approach focused on (i) investments in skilled and motivated teachers; (ii) the elimination of child labour as an impediment to education; and (iii) promotion of education, decent work and increased family income.

Quality of education and curricula

39. The quality of the education and the curricula available to indigenous peoples were the main focus in six recommendations. Overall, the Permanent Forum calls for United Nations agencies and States to develop culturally relevant curricula and educational material and pedagogy to improve access to and quality of indigenous education. To ensure the latter, it is essential that indigenous knowledge and culture are built into education programmes and curricula. UNESCO reported on its continuous technical assistance to the development of curricula and guidelines for textbooks and learning materials by producing and disseminating publications (E/C.19/2006/6/Add.9). In addition, the Permanent Forum recommended that States and United Nations agencies consider creating international indigenous universities. The creation of such institutions at the international level is still ongoing. Along those lines, the Permanent Forum also recommended the creation and/or consolidation of academic institutions to train indigenous leaders and urge existing universities to develop curricula on indigenous peoples. Such indigenous-focused university programmes have gained some traction but the need for consistency requires more effort. On the issue of boarding schools, the Permanent Forum recognized that they had had a very negative and even tragic impact on the families, cultures and identity of indigenous peoples. Conversely, today boarding schools are seen in some cases as an important step for indigenous children who do not have other educational options (E/2007/43, para. 70). Based on the complexity of the issue, the secretariat of the Permanent Forum was charged with undertaking a comparative study on indigenous peoples and boarding schools, which was submitted at the eighth session (E/2009/43).

Indigenous peoples' participation

40. Eight recommendations were made by the Permanent Forum on the issue of indigenous peoples' participation in the process of enhancing the access to and quality of indigenous education. Aside from recommending that indigenous peoples be invited to participate in UNESCO activities to ensure the recognition and contribution of indigenous knowledge, the Permanent Forum also requested that States consider adopting and implementing comprehensive national education policies based on participation, among others. Playing a crucial role in ensuring participation, the Permanent Forum made several recommendations pertaining to awareness-raising and information dissemination. This resulted in responses on examples of participation and awareness-raising from, inter alia, the Governments of Finland, Canada and New Zealand, and from the United Nations Institute for Training and Research (UNITAR), the United Nations Department of Public Information and UNESCO. From the responses received to recommendations on participation and awareness-raising, there is not enough information on whether States and United Nations agencies are adopting comprehensive strategic policy

frameworks to ensure the full and effective participation of indigenous issues in ensuring their right to education.

Other recommendations

41. Several recommendations were made on the margins of creating networks and sharing best practices. They call for States, the United Nations system and indigenous peoples' organizations to strengthen the necessary communication. education and information infrastructure and support networks of educators on indigenous issues, and to share experiences on education that represent best practices at the primary or community level, based on indigenous cultures and traditions. So far, a limited number of responses to these recommendations have been received by the Permanent Forum. FAO reported that it organized a special session on indigenous peoples' communication for development which focused on the role of communication in combating the marginalization and isolation of indigenous peoples and on its potential to foster their self-determination and development.

42. Table 2 provides a breakdown by session of the number of recommendations made and implemented concerning education.

Table 2
Implementation of the recommendations of the Permanent Forum on education

	Recommendations		
Permanent Forum session	*Total*	*Implemented (ongoing or complete)*	*Not yet implemented or reporting not received*
First	–	–	–
Second	10	9	1
Third	6	5	1
Fourth	11	7	4
Fifth	4	4	–
Sixth	2	2	–
Seventh	2	2	–
Eighth	1	1	–
Ninth	5	3	2
Tenth	1	1	–
Total	**42**	**34**	**8**

C. Culture

43. Indigenous peoples have, over the course of generations, developed rich sets of knowledge about the natural world, health, technologies and techniques, rites and rituals and other cultural expressions. Culture is one of the six mandated areas of the Permanent Forum and is inextricably linked to indigenous peoples' identity, their traditional knowledge, their experiences with the natural environment and hence their territorial and cultural rights. Cultural practices, traditions and values of

indigenous peoples — as long as they are in line with human rights principles — can play a critical and positive role in advancing and promoting gender equality and human rights. Although culture was not explicitly mentioned in the Millennium Development Goals adopted in 2000, it has been widely acknowledged as a key element to be taken into account in order to achieve the development goals set by the international community.

44. In 2005, on the occasion of the first review of the Millennium Development Goals, the international community recognized the diversity of the world and that all cultures and civilizations contribute to the enrichment of humankind. In 2010, while the Millennium Development Goals were reviewed for the second time, States went one step further by explicitly emphasizing the importance of culture for development and its contribution to the achievement of the Goals, and by encouraging international cooperation in the cultural field. This was followed by the adoption of two resolutions on culture and development by the General Assembly, resolutions 65/166 in 2010 and 66/208 in 2011, which both recognized the positive contribution of local and indigenous traditional knowledge as the need to preserve and maintain indigenous peoples' knowledge.

45. Under the basic principles of universality, equality and non-discrimination, indigenous peoples are entitled to the full range of rights established under international law. Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples, states that "Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions." This is also echoed in ILO Convention No. 169, articles 13, 23, 30; the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, article 7; the Convention for the Safeguarding of Intangible Cultural Heritage, article 15; the Convention on Biological Diversity, articles 8 (j), 10 (c), 15; and the International Covenant on Civil and Political Rights, article 27.

46. At its second, third, sixth, ninth and tenth sessions, the Permanent Forum made recommendations on culture. These recommendations reflect the Permanent Forum's broad thematic mandate, addressing a wide range of issues, including education, environment, economic and social development, health and human rights. Recommendations have been addressed to States, United Nations agencies, programmes and funds, in particular UNESCO, World Intellectual Property Organization, Secretariat of the Convention on Biological Diversity, United Nations Development Programme, World Trade Organization, OHCHR, academia, donors, indigenous peoples and civil society. It demonstrates that culture is an essential component for the survival of indigenous peoples.

Indigenous women

47. At its third session, in 2004, the Permanent Forum made 14 recommendations on culture under the special theme "Indigenous women". It emphasized that knowledge systems of indigenous women are the essence of their cultural

expression and identity. The Permanent Forum also recognized the importance of identifying and the need to define the issues and needs of indigenous women, taking into account regional and local cultural differences, and the need to put in place policies and mechanisms to increase indigenous women's access to markets and capital in order to enable them to turn their traditional skills into sustainable forms of income generation (E/2002/43, para. 31). Other recommendations ranged from the instrumental role of women in indigenous societies as the custodians of sacred knowledge and power, and as medical specialists. This also included the recognition of women and their instrumental roles in indigenous societies as educators, healers and ritual specialists (ibid., para. 35).

Legislation acknowledging traditional knowledge

48. At its second session, held in 2003, the Permanent Forum made recommendations to States to consider constitutional and other legal and educational reforms to recognize and respect cultural, religious and linguistic diversity and spiritual practices, within the framework of international human rights. The Forum welcomed the initiative of UNESCO to draft a convention on intangible heritage and request the participation, consultation and dialogue with indigenous peoples and the Forum. In October 2003, the Convention for the Safeguard of the Intangible Cultural Heritage was adopted.

49. The Permanent Forum also made recommendations to WIPO and its member States to take practical steps to ensure that the inappropriate and unauthorized documentation and publication of traditional knowledge and traditional cultural expressions/folklore do not occur, and to reinforce the capacity of indigenous peoples and local communities to make informed decisions in their own interests concerning whether and how documentation should be issued. In addition, the Forum called upon WIPO, States and other stakeholders to facilitate the participation of indigenous peoples, local communities and the Forum in sessions of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and in related consultations, caucuses, briefings and workshops. In October 2005, member States of WIPO set up a Voluntary Fund for Accredited Indigenous and Local Communities.

50. At its ninth session, held in 2010, the Permanent Forum welcomed Economic and Social Council decision 2009/250 on a proposed amendment to the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, related to the traditional use of the coca leaf. The Forum recommended that States support this initiative, taking into account articles 11, 24 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples. In 2013, the traditional use of the coca leaf was accepted in accordance with article 50, paragraph 3, of the Single Convention.

51. At its tenth session, held in 2011, the Permanent Forum confirmed the intention to participate in the thirty-fifth session of the UNESCO World Heritage Committee to encourage a review of existing procedures with regard to the rights to free, prior and informed consent and related mechanisms, norms and standards in the preparation and processing of world heritage nominations by States parties. In June 2011, a member of the Forum participated at the session.

Intercultural dialogue

52. At its second session, the Permanent Forum recommended that States introduce indigenous languages in public administration in indigenous territories, where feasible; and support indigenous media and promote the engagement of indigenous youth in indigenous programmes; in addition, to organize sports and athletic games involving indigenous sports in order to challenge existing misconceptions by highlighting diverse community expressions. At its third session, the Permanent Forum recommended that States develop intercultural public policies to implement the United Nations Declaration on the Rights of Indigenous Peoples and strengthen, in an equitable manner, local cultures as a way to eliminate all forms of discrimination and segregation that have deepened historic inequalities. At its sixth session, the Permanent Forum, considering that 2008 was the International Year of Languages, recommended that the Economic and Social Council approve an expert group meeting on indigenous languages (E/C.19/2008/3) to consider concrete actions and legislative development aimed at mainstreaming principles of cultural diversity and strengthening indigenous languages as a way to promote intercultural dialogue and affirm indigenous peoples' identity.

Indigenous peoples' participation

53. The Permanent Forum made a number of recommendations to States and United Nations agencies and other stakeholders to support indigenous peoples' participation in meetings, management of cultural sites, preparation of guidelines, ethical codes of conduct, and monitoring mechanism, among others (E/2003/43, paras. 97, and 100-105). However, the process of indigenous participation still faces fundamental challenges. Currently, at United Nations meetings, indigenous peoples participate at the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore sessions organized by WIPO and the article 8 (j) on traditional knowledge and access and benefit-sharing session organized by the CBD. The Convention on Biological Diversity and WIPO provide funds to support the participation of indigenous peoples. Recently, there has been a Permanent Forum member participating at annual sessions of the UNESCO World Heritage Committee.

Other recommendations

54. There are a number of recommendations calling on States and United Nations agencies to support indigenous peoples in their process of cultural heritage restoration and strengthening. Furthermore, recommendations were made to reinforce indigenous concepts of economic, social, political, cultural and spiritual well-being and cultural diversity, and development indicators to measure how such well-being and cultural diversity are promoted. In 2010, the secretariat of the Permanent Forum organized an expert group meeting on Development with Culture and Identity, articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples, where it was reiterated that the right to self-determination is the basic fundamental condition for indigenous peoples to exercise their well-being (E/C.19/2010/14, paras. 40, 43 and 44).

55. Table 3 provides a breakdown by session of the number of recommendations made and implemented concerning culture.

Table 3
Implementation of the recommendations of the Permanent Forum on culture

		Recommendations	
Permanent Forum session	*Total*	*Implemented (ongoing or complete)*	*Not yet implemented or reporting not received*
Second	11	0	11
Third	14	12	2
Fourth	0	0	0
Fifth	0	0	0
Sixth	2	0	2
Seventh	0	0	0
Eighth	0	0	0
Ninth	5	1	4
Tenth	4	1	3
Total	**36**	**14**	**22**

III. Conclusion and recommendations

56. The scope of the Permanent Forum's recommendations address a broad range of health issues in line with indigenous peoples' holistic and cultural approach to health. At the same time, there are gaps that require attention. For example, addressing the specific rights and needs of indigenous women, youth and children is an urgent priority. **Also, the issue of indigenous men's health has not been mentioned in all of the Permanent Forum's recommendations. Hence, there is much work to be done in the future.**

57. Indigenous peoples' intangible heritage and cultural expressions are threatened because the important role of indigenous peoples in the production, safeguarding, maintenance and recreation of the intangible cultural heritage is neither recognized nor sufficiently considered and valued in policies for a sustainable future. Efforts are under way to ensure protection of indigenous knowledge, intangible heritage, and promotion of their cultural expressions that are collectively maintained and intergenerational in nature. It is also potentially a source of wealth to the wider community that is yet to be fully realized, and part of the cultural heritage of humanity.

58. The adoption of the United Nations Declaration on the Rights of Indigenous Peoples in 2007 has resulted in renewed attention to the issue of indigenous participation in the implementation of the World Heritage Convention. **The Permanent Forum should continue to call on the World Heritage Committee to review and revise its working methods and Operational Guidelines, with a view to ensuring that indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites, and that their free, prior and informed consent is obtained when their territories are being nominated and inscribed as World Heritage sites.**

59. **Considering the need to protect and enhance indigenous peoples' distinct identities and cultural institutions, philosophies and world views, customary laws, indigenous political governance and justice systems, indigenous knowledge systems and sustainable traditional livelihoods and other economic systems, and to rebuild indigenous peoples' cultures and communities in the urban centres displaced from their traditional territories, the Permanent Forum may wish to designate a member to write a broader report on how States and United Nations agencies operationalize and implement the recommendations of the Forum on this matter.**

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Study on the impact of the mining boom on indigenous communities in Australia

Note by the Secretariat

Pursuant to a decision of the Permanent Forum on Indigenous Issues at its eleventh session (see E/2012/43, para. 106), Megan Davis, a member of the Forum, undertook a study on the impact of the mining boom on indigenous communities in Australia, which is hereby submitted to the Forum at its twelfth session.

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Study on the impact of the mining boom on indigenous communities in Australia

I. Introduction

1. Like many States, Australia has over the years experienced a series of mining booms — distinguished by a significant increase in mining investment or mining output — and is currently experiencing a mineral and energy boom.[1] While it has not endured the failings associated with other countries caught up by the phenomenon known as the "paradox of plenty" or the "resource curse", where mineral-rich States suffer a decline in the rule of law and public institutions and regions experience extreme poverty, there exist some mining regions, where Aboriginal populations are significant majorities, for which the socioeconomic data show extreme poverty.[2]

2. In Australia, more than 20 per cent of the land mass is held by indigenous peoples in a variety of statutory land tenure systems.[3] It is therefore unsurprising that more than 60 per cent of mining projects in Australia are in close proximity to indigenous communities.[4] Most of these projects occur in the Pilbara region of Western Australia.[5] The current mining boom in Australia having significantly affected indigenous communities, the present study will provide an overview of the positive and negative aspects of the boom, drawing upon the extensive literature generated since the boom began. Some of the beneficial impacts include agreement-making with indigenous peoples, economic development and capacity-building, employment opportunities and improved infrastructure. The adverse effects have been felt in terms of reduced cultural and community well-being, environmental damage, damage to sacred sites and increased cost of living, including reduced access by indigenous peoples to affordable housing and health services.

3. It should be noted, however, that there is a lack of reliable demographic data on the impact of mining on indigenous communities and that tools to measure quality of life or well-being lack a cross-cultural fit or indigenous input, meaning that the data that are available are limited in providing an accurate picture of the impact of the mining boom.[6] The challenge of measuring indigenous well-being is

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[1] Ric Battellino, "Mining boom and the Australian economy", *Bulletin* (Reserve Bank of Australia, 2010).

[2] Marcia Langton and Odette Mazel, "The resource curse compared: Australian Aboriginal participation in the resource extraction industry and distribution of impacts", in *Community Futures, Legal Architecture: Foundations for Indigenous Peoples in the Global Mining Boom*, Marcia Langton and Judy Longbottom, eds. (Oxford, Routledge, 2012).

[3] Marcia Langton and Odette Mazel, "Poverty in the midst of plenty: Aboriginal people, the 'resource curse' and Australia's mining boom", *Journal of Energy and Natural Resources Law*, vol. 26, No. 1 (2008), pp. 31-65.

[4] Australia, Department of Industry, Tourism and Resources, *Working with Indigenous Communities: Leading Practice Sustainable Development Program for the Mining Industry* (2007), p. 3.

[5] John Taylor and Benedict Scambary, "Indigenous people and the Pilbara mining boom: a baseline for regional participation", Research Monograph, No. 25 (Canberra, Centre for Aboriginal Economic Policy Research, Australian National University, 2005).

[6] Jon Altman and David Martin, eds., "Power, culture, economy: indigenous Australians and mining", Research Monograph, No. 30 (Canberra, Centre for Aboriginal Economic Policy Research, Australian National University, 2009).

one that has previously been raised by the Permanent Forum on Indigenous Issues (see E/C.19/2006/CRP.3).

4. The present study will begin by considering the relevant articles of the United Nations Declaration on the Rights of Indigenous Peoples before surveying the positive and negative impacts of the boom in terms of agreement-making, employment and the social fabric, including factors such as housing, health and well-being.

II. Relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples

5. The United Nations Declaration on the Rights of Indigenous Peoples contains a number of relevant provisions. Article 3 outlines the right to be involved in the decision-making process and measures that affect personal rights to development. Article 8 enshrines the right to equal protection under the law and seeks to eliminate and prevent discrimination. Article 10 enshrines rights against removal from land. Article 25 stresses the importance of cultural and spiritual values that exist in the relationship with land, while article 26 pertains to the right to own and have access to land on the basis of traditional ownership. Article 28 outlines the right to compensation. Article 29 enshrines the right to use, manage and conserve resources and land, while article 32 sets out the right to have input into decisions where States retain ownership of minerals or subsurface resources. Article 33 pertains to the right to develop and determine identity and membership.

III. Impacts of the mining boom

A. Agreement-making

6. Much of the mining activity in Australia occurs on indigenous lands. It therefore follows that the benefits of the mining boom are available to those indigenous communities who live in, or whose territories are in close proximity to, mining areas. Agreement-making between mining companies and indigenous communities is a feature of the current boom. Indeed, this boom can be characterized as featuring emerging best practice in relation to agreement-making, whereby mining companies are taking a more long-term approach that involves consideration of the well-being and socioeconomic disadvantage of indigenous peoples. This means that agreements cover not only distribution of revenue but also poverty, education, training, health and culture.

7. Generally, the mining industry has been required by law to engage with indigenous peoples and enter into agreements with indigenous communities by virtue of existing legal frameworks such as the Native Title Act 1993 and the Aboriginal Land Rights (Northern Territory) Act 1976. It is important to note that agreement-making activity and the proceeds of any agreement made will not necessarily involve or reach indigenous communities simply because they live near a mine. Rather, property rights holders such as native title holders will be primarily

involved. Indeed, it is accepted that few communities in Australia will benefit from mining revenues.[7]

8. The assumption underlying discussion of the mining boom is that indigenous communities have the capacity to win significant revenues from mining on their traditional lands. In the Northern Territory and in the Cape York, Pilbara and Kimberley regions, this assumption increasingly holds true. As demonstrated by recent research into financial and other provisions of agreements between indigenous groups and mining companies, however, many indigenous groups and their communities in Australia still have little capacity to insist on substantial payments. For those groups, the issue of whether mineral revenues represent a curse or an opportunity is, as yet, purely hypothetical.

9. Evidence shows that the quality of mining agreements and their benefits are difficult to ascertain because of the confidentiality of such agreements: it may be the case that the mere act of concluding agreements has not necessarily assured meaningful or equitable outcomes for a significant proportion of indigenous communities.[2] In addition, the effectiveness of an agreement may depend on the administering indigenous organization and its skills and resources. Accordingly, while the right to negotiate under the Native Title Act does provide opportunities for indigenous communities, low levels of employment, educational attainment and work readiness in remote areas limit the capacity of the mining boom to transform communities.[2] In addition, it is contended that state governments in Australia, e.g. that of Western Australia, have exacerbated these obstacles for indigenous communities through inequitable taxation arrangements and by failing to redistribute the wealth generated in those regions.[2]

10. In any event, it has been rights holders and, in particular, native title holders who have led the way in increased activity in agreement-making between mining industries and native title holders. The formal recognition of indigenous rights has encouraged the minerals industry to take a new approach, acknowledging the detrimental impacts of mining on Aboriginal communities and their entitlement to benefits as a result.[2] One important benefit of this is that the proliferation of agreement-making has resulted in the development by indigenous communities of expertise, skills and experience in negotiating agreements.

11. Four main ways in which mining revenues are distributed to indigenous communities have been identified: individual payments to individuals (in cash or in kind); provision of services; investment in indigenous businesses; and investment in long-term capital funds.[7] Indeed, trusts have been a significant development of the boom for a number of reasons, including their ability to improve governance and financial management. Nevertheless, there is concern about the limitations of trusts regarding royalties manifest in the tax implications for indigenous organizations. In addition, some of those communities benefiting from agreements and revenues have expressed concern that the benefits are tied to trusts for future use. Another issue raised in relation to the boom is rent seeking, or behaviour that prioritizes competition for access to existing resources, while ignoring or downplaying opportunities to generate new/additional resources.[7] There is concern that beneficiaries may give

[7] Ciaran O'Faircheallaigh, "Curse or opportunity? Mineral revenues, rent seeking and development in Aboriginal Australia", in *Community Futures, Legal Architecture*, Langton and Longbottom, eds.

preference to individual payments over an approach sustainable beyond the boom such as royalties for community benefit.

12. Those challenges aside, one of the most exciting developments of the current boom is the partnership approach between mining companies and indigenous communities that involves the investment by the former in community development and infrastructure. The underlying motivation is to ensure that communities reap sustainable benefits from the boom, achieved through a partnership approach that emphasizes indigenous self-determination. Indeed, in many indigenous communities in mining regions, mining companies are providing the infrastructure and services that the state governments, and the federal Government, are failing to deliver.

13. An example of a partnership agreement is that signed by Rio Tinto, which will direct a 0.5 per cent share of revenue in the Pilbara region to indigenous communities, estimated to represent billions of dollars over 40 years.[8] Similarly, the Argyle Diamond Mine Indigenous Land Use Agreement is regarded as a good practice model for partnerships between mining companies and indigenous peoples. Its structure includes two trust accounts. A total of 80 per cent of the royalties are paid into a charitable trust for law and culture, education and training and community development partnerships, which cannot be accessed until the closure of the mine in 2018. The remaining 20 per cent is paid into a discretionary trust, to be distributed between seven indigenous traditional owner groups to build capacity in health, education and business development. The agreement is considered to encourage individual enterprise and economic engagement rather than the common practice of accumulating and distributing payments.[9] In addition, employment of indigenous peoples has almost reached the 25 per cent target set in 2005, the lack of work readiness and training notwithstanding.[9]

B. Employment

14. Employment opportunities flowing from the mining boom have benefited those communities whose land is both in proximity to and affected by mining activity. Emerging from the boom is a body of good practice in relation to the recruitment, employment and retention of indigenous peoples by mining companies.[10] There are many programmes and partnerships aimed at employment of indigenous peoples, including those administered by Rio Tinto, the Australian Employment Covenant, partnerships between the federal and state governments and the Queensland Resources Council (in which BHP Billiton, Xstrata and MMG Century are participants) and indigenous programmes such as the North West Queensland Indigenous Resources Industry Initiative and the Bowen Basin Indigenous Participation Partnership.

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[8] Karen McNab and Magaly Garcia-Vasquez, "Autonomous and remote operation technologies in Australian mining", Cluster Research Report, No. 2.5 (Brisbane, Centre for Social Responsibility in Mining, Sustainable Minerals Institute, 2011). Available from www.csrm.uq.edu.au/Portals/0/docs/Autonomous-and-Remote-Operation.pdf.

[9] Kim Doohan, Marcia Langton and Odette Mazel, "From paternalism to partnership: the Good Neighbour Agreement and the Argyle Diamond Mine Indigenous Land Use Agreement in Western Australia", in *Community Futures, Legal Architecture*, Langton and Longbottom, eds.

[10] Tony Tiplady and Mary Anne Barclay, "Indigenous employment in the Australian minerals industry" (2007). Available from www.csrm.uq.edu.au/docs/CSRM%20Report_FINAL%20TO%20 PRINT_singles.pdf.

15. In addition to employment within communities in close proximity to mining concessions, regional and urban-based indigenous peoples have also become fly-in/fly-out employees of mines. It has been observed, however, that mining employment is often located away from indigenous communities and that individuals are reluctant to engage in purposeful migration to pursue work.[11]

16. Indigenous organizations and mining companies have identified that employment in the mining industry can be hampered by low education levels and skills, which limit the job readiness of local indigenous peoples.[2] Poor indigenous employment or labour force participation is less a measure of demand than it is a reflection of the fact that many indigenous peoples are poorly equipped to take advantage of skilled employment opportunities, even when they are available.[11] Even in relation to agreements that are regarded as good practice models in Australia, such as the Argyle Diamond Mine Indigenous Land Use Agreement, work readiness has been regarded as a challenge.[9] Nevertheless, Argyle Diamond Mine found that 91 per cent of trainees who participated in the indigenous programme and subsequently left were employed elsewhere.[12]

17. A less-discussed impact on indigenous employment is the reduction in long-term jobs as mining operations become largely autonomous and remotely controlled. One estimate was of a decrease of between 30 and 40 per cent in on-site employment in the future.[8] Given that 50 per cent of indigenous employees constitute semi-skilled positions, this large-scale automation will significantly affect indigenous employment.[8] Lastly, other factors that affect indigenous employment in mines include health and well-being, chronic illness, arrest and incarceration.[13]

C. Social impacts

18. The social impacts of the boom have been extensively documented in the Australian media and in the literature. Mining has a huge impact on the local social fabric[14] and indigenous communities in close proximity to mining operations can experience constant life insecurity.[2] Even in the Pilbara region, where indigenous peoples have been more engaged in the benefits of the current mining boom, the corporate resolve to employ indigenous workers according to the provisions of land use and other agreements has done little to improve socioeconomic conditions for Aboriginal people there.[2]

19. This insecurity or impact on the social fabric occurs for various reasons, including non-indigenous migration into indigenous communities and the existence of transient workers with no meaningful commitment to place;[14] better roads, meaning increased traffic and increased tourism; and community conflict stemming

[11] John Taylor, "Measuring indigenous outcomes from mining agreements in Australia", in *Community Futures, Legal Architecture*, Langton and Longbottom, eds., p. 60.

[12] See the survey of Aboriginal former employees and trainees of Argyle Diamond Mine carried out by the Centre for Social Responsibility in Mining in 2007, available from www.csrm.uq.edu.au/docs/Argyle%20former%20employees%20final%20report.pdf.

[13] John Taylor, "Data mining: indigenous peoples, applied demography and the resource extraction industry", in "Power, culture, economy", Altman and Martin, eds., p. 69.

[14] Kerry Carrington, Russell Hogg and Alison McIntosh, "The resource boom's underbelly: criminological impacts of mining development", *Australian & New Zealand Journal of Criminology*, vol. 34, No. 3 (2011), pp. 335 and 340.

from perceived and real opportunities for income, jobs and education. In particular, the mining boom has shed light on the lack of government investment in services, facilities and infrastructure in mining regions and the declining economic status of Aboriginal people.[2]

20. For example, the mining boom has led to housing shortages and increased rent, placing added stress on already difficult and strained housing stock for indigenous peoples. In addition, the fly-in/fly-out practice has rendered social housing less accessible. In the Pilbara region, for example, the state government sold off state housing to a private construction company for the purpose of creating fly-in/fly-out camps. Such steps can lead to increased homelessness for indigenous peoples. In addition, the strain of housing and homelessness leads to family disruption and breakdown and other abuses, including violence and alcohol.

21. While it has been noted that mining companies have contributed to infrastructure and service delivery in indigenous communities, including by providing resources for health services, many health concerns have arisen in relation to the boom. As highlighted in one report, the life expectancy for indigenous men in the Pilbara region is between 52 and 55 years and for indigenous women is between 60 and 63 years, which raises questions about the physical limitations on full participation in the workforce. The report states that, "if we add to this the fact of relatively high Indigenous morbidity rates commencing in young adulthood and rising throughout the prime working ages, then a pattern emerges of severe physical constraints on the ability of many in the community to engage in meaningful and sustained economic activity".[5] The current indigenous health crisis in Australia therefore already poses an obstacle to full participation in the labour market, as does the vastly underresourced health infrastructure that some mining companies have targeted in their agreements with indigenous communities.

22. In addition, medical issues such as whooping cough or gastroenteritis have been known to spread more easily in fly-in/fly-out camps. The impact of any medical crisis upon such camps means that local health services are stretched even further. There are also concerns about substance abuse, including high levels of alcohol consumption and drug-taking, as mining employees inundate towns. The corollary of such inflows is the antisocial and violent behaviour that occurs with, in particular, high consumption of alcohol. The high cost of living frequently found in mining regions entails high food prices, which will affect the nutrition of indigenous families and the selection of fresh fruit and vegetables. Lastly, an issue raised by many indigenous peoples is the impact of the mining boom on their culture, with elders noting the diminution of leadership. Mining employment can affect the maintenance of cultural knowledge.

IV. Conclusions

23. The present study has provided a brief overview of the impact of the current Australian mining boom on indigenous peoples and their communities. The impact is both negative and positive. Mining activity occurs mostly on indigenous lands and the literature reveals that the redistribution of the wealth from the mining boom to indigenous communities is inequitable.[2] Moreover, how indigenous peoples prepare for the future is important, given that they need the benefits of the mining boom — employment, training, education, business investment and community development

— to be sustainable far into the future, lest they find themselves in a precarious position when mine closures, or any slowdown in the boom, affect income streams. It has been argued that support from native title corporations, regional service providers and community councils needs to play a critical role in overcoming the inequitable distribution of benefits and the consequences of the mining boom and that indigenous administrative governance and leadership need to provide capacity-building and leadership programmes to build capability.[3]

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Item 8 of the provisional agenda*
Future work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues

Evaluation of the small grants programme on the Second International Decade of the World's Indigenous People under the Trust Fund on Indigenous Issues

Note by the Secretariat

Summary

During the meeting of the advisory group for the small grants programme of the Trust Fund on Indigenous Issues held in May 2011, it was recommended that a study be conducted to: (a) provide an assessment of the impact and the good practices identified from projects; and (b) provide guidance to the Permanent Forum on Indigenous Issues with respect to the criteria for applying for small grants financed through the Trust Fund.

The present study, which considers the projects that were financed between 2006 and 2011, finds that the small grants programme, established to support implementation of the Second International Decade of the World's Indigenous People (2005-2015) under the Trust Fund, has effectively enabled indigenous peoples from around the world to positively contribute to the achievement of the goal and the objectives of the Second Decade, either through actions taken by indigenous peoples themselves or by influencing policies or policy processes that affect them. The policy impact of the projects financed by the small grants programme has been evident at the local level, where it matters the most, which is a great achievement considering the limited amount of funds and the significant time it takes to implement the projects. Increased awareness about indigenous peoples' rights and strengthened indigenous peoples' organizational capacity were also identified as positive effects of the small grants programme. This is a success in terms of outreach and a major contribution to policy development and implementation.

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I. Introduction

1. Established by General Assembly resolution 57/191 and in accordance with Assembly resolution 59/174, the Trust Fund on Indigenous Issues provides funds to the small grants programme for the Second International Decade of the World's Indigenous People (2005-2015) to promote, support and implement the objectives of the Decade. In the framework of the small grants programme, priority is given to projects focusing on the areas of culture, education, health, human rights, the environment and social and economic development, which were identified in the Programme of Action for the Second Decade (see A/60/270, sect. II). The Trust Fund is financed through voluntary contributions. The Bureau of the Permanent Forum also acts as the advisory group for the small grants programme, whose members hold a meeting each year prior to the session of the Permanent Forum in order to examine the projects and provide advice on their selection and on the allocation of grants.

II. Methodology

2. For the present study, narrative reports on projects that were financed between 2006 and 2010 were reviewed in terms of project performance; the reports on projects financed in 2011 are not yet available. Assessing the projects included looking at the following aspects:

(a) Whether the project's objectives corresponded with the objectives of the Second Decade;

(b) Whether the objectives and the expected results of the projects were clear and specific;

(c) Whether the narrative reports on the projects included information on the achieved results (not only the expected results) and the lessons learned, from key factors of both success and failure.

3. In order to assess whether the projects strengthened indigenous peoples' role in policy development at the country level, a number of criteria were identified, including:

(a) Whether there was a shift in the norms relating to indigenous peoples' rights;

(b) Whether the organizational capacity of indigenous peoples was strengthened;

(c) Whether the alliances between indigenous peoples and other groups were strengthened;

(d) Whether there was strong support for indigenous peoples' concerns;

(e) Whether there was an improvement in policy development for indigenous peoples;

(f) Whether there were improvements in indigenous peoples' personal, social, physical and political conditions, and whether such improvements were specific to any particular section of the community, for example indigenous women, youth, etc.

4. In addition to looking at the general, overarching factors identified in the narrative reports, assessing the projects meant looking at specific aspects such as innovation, the potential for replication and/or scaling up, sustainability, ownership, gender balance and implementation of the United Nations Declaration on the Rights of Indigenous Peoples. In addition, the current modus operandi of the small grants programme and knowledge management and resource mobilization arrangements, including for fundraising, were reviewed.

III. Project performance

A. Correspondence between the objectives of the project and the objectives of the Second Decade

5. The goal of the Second Decade is the further strengthening of international cooperation for the solution of problems faced by indigenous peoples in such areas as culture, education, health, human rights, the environment and social and economic development, by means of action-oriented programmes and specific projects, increased technical assistance and relevant standard-setting activities (see General Assembly resolution 59/174, para. 2). The objectives of the Second Decade are contained in the Programme of Action for the Second Decade (see A/60/270, sect. II), which was adopted by the General Assembly in its resolution 60/142, in December 2005.

6. The above-mentioned areas of the Second Decade (culture, education, health, human rights, the environment and social and economic development) have been addressed through the small grants programme since its inception. Most of the projects funded by the programme have focused on strengthening the status of indigenous peoples as rights-holders, including by increasing their knowledge about claiming their rights, for example with regard to education, the empowerment of indigenous women and youth, the protection of biodiversity and the environment and issues relating to mining indigenous lands. In most projects, indigenous leaders and representatives were involved through the local community leadership and/or through relevant indigenous peoples' organizations, including women's and youth organizations. Hence, a majority of the projects were aligned with the following objectives of the Second Decade:

(a) Promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects;

(b) Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent;

(c) Redefining development policies so that they are equitable and culturally appropriate, including in respect of the cultural and linguistic diversity of indigenous peoples.

7. Most of the sampled projects scored above average in terms of the alignment between their objectives and the objectives of the Second Decade. Some projects

focused on interventions for improving indigenous peoples' livelihoods, for example by providing vocational training in areas such as agriculture, subsistence farming and making films about indigenous cultures and traditions. Overall, the projects funded under the small grants programme generally corresponded with the objectives and contributed to the achievement of the goal of the Second Decade. At the same time, because these projects were implemented at the local level, they did not reach the top governmental circles, in other words the main decision-making areas for policy development and implementation. On the other hand, the projects were able to influence policy development at the local level, among local community members and local authorities, and therefore were still making a big difference.

8. While it is not realistic to expect small grants of less than $10,000 to achieve revolutionary, high-level policy changes, it should also be noted that some innovative and unusual projects were able to achieve great impact in spite of their smallness. These projects could be showcased as innovative approaches that might be replicated in other places, be treated as lessons learned or be an example of which ingredients are needed for a project to be successful (see para. 14 below for a list of key success factors identified for such projects). Moreover, the impact of such projects reaches, or can reach, far beyond the objectives of the Second Decade.

9. One such exemplary project strengthened indigenous conflict resolution mechanisms, resulting in the resolution of tribal conflicts that would otherwise have been detrimental for the communities involved and could have resulted in the loss of human lives and resources. Another project successfully raised environmental awareness through an art competition, thus achieving the preservation of culture and the dissemination of information among participating communities. Yet another project was successful in bringing key policy players to the table to discuss the impact of mining in indigenous territories; this initiative was also well covered by the media. A fourth project was able to revitalize interest in developing traditional crops that had almost become extinct in a certain region owing to competition from commercial crops. Because the grants are small, the sustainability of projects cannot be guaranteed, but it is clear that there are influential, innovative, exemplary and replicable projects within the portfolio of the small grants programme.

B. Clarity and specificity of objectives and expected results

19. In some project proposals the objectives and expected results were clearly formulated and specific while in others they were not specified. Although it was clear in the proposals what the projects were supposed to achieve, in the vast majority of cases the objectives were — from a strictly results-based point of view — not formulated clearly. There were the following recurring issues in this respect:

(a) The project objectives were formulated as activities (e.g. "awareness campaign to educate people on the importance");

(b) There were too many objectives (some proposals mentioned 6-10 objectives to be achieved);

(c) The objectives were not as specific as they could have been (e.g. "promote the active participation of indigenous women" or "build the capacity of community structures").

11. Similar remarks can be made with regard to project proposals that included expected results. However, it should be noted that these are very common issues in project formulation, particularly if the project proposal was developed by a small indigenous organization with limited experience in writing such proposals. This situation is certainly not unique to the small grants programme.

C. Results achieved and lessons learned

12. In 90 per cent of the projects, the expected results were achieved. It can be challenging to conclude that results have been achieved if the objectives are not stated clearly in the project proposal and if the projects are assessed by those implementing the projects. Fortunately, in most project proposals the expected results and objectives were set out clearly. In general, a genuine effort was made to complete the project reports, which also included, in line with the reporting requirements, information on which results had not been achieved and why.

13. Below is a list of the recurring key success factors and key failure factors that were reported in the project reports and were considered to have played a role in the project outcome (paras. 14-16). The words "success" and "failure" are used here because they are common in project management terminology, not to denote that a project was a success or a failure overall. The factors listed below can be regarded as lessons learned at the project level.

Key success factors

14. The following key success factors (listed in no particular order) could, in general terms, be distilled from the project reports:

(a) Conscious attention is paid to adapt to local circumstances and cultural appropriateness (e.g. workshops were organized in a certain village so that the participating women did not have to be brought to a more central location; village leaders were visibly involved in project activities);

(b) Institutional mechanisms are designed and put in place (a local committee was established and put in charge of project activities; existing local mechanisms, such as a local women's organization, were utilized for advocacy and awareness, in turn providing support for the institutionalization or formalization of such existing mechanisms by, for example, establishing local community student organizations);

(c) Project activities are incorporated into ongoing processes or designed as a follow-up to previous interventions, thus reinforcing or supporting existing processes rather than introducing completely new ones;

(d) Key policymakers (e.g. politicians, regional administrators, influential village leaders, traditional authorities or community organizations) are well targeted;

(e) There is a strong focus on partnership-building and networking, thus ensuring a broader impact and a greater awareness of project results, as well as a

greater chance that activities will continue beyond the project's duration (more sustainability);

(f) The language used is easily understood and/or is an indigenous language;

(g) Appropriate strategies and activities that are suitable to the target group are used (this factor is particularly important in the case of youth);

(h) Activities are specific and focused, making their implementation straightforward (the reverse was not necessarily true: activities that were described in broad terms did not automatically lead to the unsuccessful implementation of the project);

(i) A flexible approach to implementation is taken to respond to changing circumstances;

(j) A clear and consistent methodological approach is used (those developing the projects knew exactly how and why activities were undertaken and what could be expected in terms of next steps);

(k) Project objectives are clear and achievable (some projects did not achieve objectives that were formulated too broadly or were simply not realistic in the framework of a small grants programme-funded project);

(l) The target group is small, a factor that is obviously very dependent on the type of project and the desired outcomes;

(m) Those implementing the project are enthusiastic and dedicated; while the level and value of the constructive energy mobilized around a project cannot be described precisely, such energy is nevertheless one of the greatest, if not the greatest, contributor to success;

(n) The projects are implemented by indigenous peoples who know their communities and the local circumstances and have access to certain internal structures or processes (this is an overriding or cross-cutting success factor).

15. The success of a project does not depend on any one particular success factor. The context in which a project is implemented is generally of great importance, and the above-mentioned list of success factors can be useful in guiding project design and implementation in specific circumstances. Many projects were successful despite the absence of typical success factors, at least according to the information provided in the project reports. Not all reports provided sufficient detail to identify success and failure factors, or their exact nature.

Key failure factors

16. Factors contributing to failure were not always explicitly described and instances of failure were not often included in the reports; at most, challenges to or problems in implementation were mentioned. The following factors are indicative of challenges that have been reported and from which lessons can be learned in designing and implementing similar projects:

(a) The budget is insufficient. This was a recurring issue in various projects. In some cases, the actual problem was fluctuations in in-country prices (e.g. increased transport prices, often in association with fluctuating exchange rates); in other cases, the activities had been underbudgeted or too many activities had been

planned in relation to the size of the approved budget. Some projects received fewer funds than had been asked for. In some instances, the project designer decided to involve more participants or communities because of a high level of interest. In other cases there was a shift in activities after the project had already been approved;

(b) Project implementation is delayed. Initial delays were reported owing to the late transfer of project funds. Delays during project implementation occurred for a variety of reasons, including in-country conflict situations;

(c) Tensions exist between the indigenous peoples involved in a project and the Government, leading to delays in project implementation or an inability to undertake certain planned activities because of the situation of conflict;

(d) There is insufficient time for implementation.

IV. Impact of projects on policy development and implementation

Shift in norms related to indigenous peoples' rights

17. Overall, the projects had a positive impact on indigenous peoples' rights; this was evident in at least three quarters of the projects. As mentioned above, such impact could be in the form of increased awareness, increased agreement on the definition of a problem, changes in attitudes, changes in the salience of an issue or changes in public behaviour. Most of the projects aimed to raise awareness about the rights and interests of indigenous peoples, which indicates that there is an enormous need for further awareness-raising among the general public and within indigenous communities and societies on indigenous peoples' rights and issues.

18. The projects targeted policymakers through various means, for example through workshops in which policymakers participated or had the project results presented to them, press releases, public events and mass media products including video productions, art and other cultural expressions. Involving youth was also a recurring strategy. In various project reports it was indicated, either explicitly or indirectly, that policymakers were not only Government officials, but also community leaders or tribal chiefs, schoolteachers, health-care workers and the staff of private companies. These institutions were all targeted for policy change in a bottom-up approach adopted at the local community level.

19. Another strategy designed to cause a shift in norms was to provoke changes in attitude. This was obvious in projects aiming to prevent HIV/AIDS and promote condom use, as well as in projects related to the value of certain cultural practices and traditional knowledge. Some projects focused on reducing discrimination against and the stigmatization of indigenous or tribal peoples, a major or overriding concern for many.

Strengthened organizational capacity

20. The project reports indicated that strengthening the organizational capacity of indigenous peoples was a high priority. Some projects strengthened organizational capacity through the traditional means of training staff. Many projects paid particular attention to institutional strengthening, for example through the establishment or revitalization of communities or indigenous peoples' organizations,

the establishment of networks across communities or regions and the conclusion of institutional agreements for such activities as regular dialogue opportunities with other organizations and institutions, including Governments. A few projects aimed to strengthen institutions by focusing on their communications potential, for example with regard to access to Internet facilities.

21. An indirect consequence of project implementation that was reported to have occurred in some projects was the enthusiasm to continue working on the project or on issues that emerged during or even after implementation. Another aspect that is inherent to any project is the strengthening of an organization's capacity to manage such projects. Many indigenous organizations have to rely on donor funding to implement their activities; the project cycle management itself, which starts with proposal writing and ends with reporting and evaluation, is often perceived as a barrier to accessing development funding. It is easier to implement a relatively small project, which contributes to an increase in confidence and skills in project management.

22. It can therefore be concluded that the small grants programme has contributed substantially to strengthening the organizational capacity of indigenous peoples, which is considered an important factor for indigenous peoples as it enables them to influence and advocate positive policy changes for their communities.

Strengthened alliances

23. Only half of the projects were involved in strengthening alliances. Most alliance-building was evident at the local community level, through the networking that occurred between those implementing the project and local community, women's or youth organizations. In some cases, collaboration between neighbouring villages increased, as did exchanges between representatives of different communities. Although a few projects paid specific attention to establishing functional and institutional networks or alliances with policymakers, alliance-building was not a major priority in most cases. Attention was paid to establishing relations, but more in the sense of awareness-building and influencing policies or opinions and less in terms of networking and collaborating on issues. This might have to do with the generally marginalized position of indigenous peoples in many countries, where there is limited trust in and contacts with outsiders.

Strengthened base of support

24. A significant number of projects sought to strengthen support for indigenous peoples' issues, in particular by raising awareness of the issues among relevant actors. Although not expressed explicitly in the project reports, it was clear that in various cases those implementing the projects had identified crucial actors to be involved in the project. As a result, there was a broadening of support for the issues at hand among actors that would otherwise not have been involved, including combatants in situations of conflict and elders and healers involved in projects with a cultural focus. The increase in support can certainly be regarded as an important positive outcome of projects implemented by the indigenous peoples involved.

Improved policies affecting indigenous peoples

25. It was reported that only slightly more than half of the projects had a positive impact on policies affecting indigenous people and that the impact itself was also only moderate. Impact was measured in terms of agreements with policymakers (a group that, as mentioned, was understood to include local community leaders, politicians and company representatives), resolutions of workshops, media articles, research publications or, in rare cases, even legislative products. In most cases, the impact was at the local or intermediate level, for example involving local community leaders, regional administrations (e.g. municipal or district authorities) or specific institutes (e.g. educational or health departments). Some projects had components related to dialogue with national Government officials. Policy impact, however, does not manifest itself only through direct change but also through indirect changes as already mentioned.

Changes in socioeconomic conditions

26. The projects contributed to achieving direct changes in socioeconomic conditions, with an above-average assessment for achieving change and almost three quarters of the projects reporting such change. An improved understanding and awareness of the rights and perspectives of the peoples or groups involved (e.g. women and youth) accounted for most of the change, while improved education for indigenous children also stood out as a frequent intervention strategy for improving social conditions.

27. Overall, an assessment of the policy impact of the projects financed from the Trust Fund on Indigenous Issues indicates that most of the projects have had a positive impact on policies affecting indigenous peoples, whether through a shift in norms (particularly changes in awareness or attitudes, both of which emerged as strong priorities in a large majority of projects), strengthened organizational capacity, strengthened alliances and partnerships and improved collaboration, strengthened support for indigenous peoples' issues, in particular through more media coverage, improvements in policies or direct changes in socioeconomic conditions. The impact was mostly at the local level, in other words within the local community or administrative division of the region or country (municipality, district, etc.). Few projects resulted in visible legislative changes and most of the impact can be considered as a step, albeit a significant one, in the process towards policy change.

28. It is important to repeat that a positive impact on policy occurred at the level where it is felt most directly, namely at the community level, among local community members and local authorities and involving local policies, thus making a significant difference in the daily lives of indigenous peoples. Moreover, policies are always the outcome of extensive processes and seldom occur in a short time, especially when they affect sensitive issues such as indigenous peoples' rights. Given the limited funding ($10,000) and duration (one year) of the projects, the small grants programme can be considered to have been successful in contributing to positive policy changes for indigenous peoples and their communities. Increased awareness (in particular on indigenous peoples' rights) and strengthened organizational capacity stand out as positive changes achieved through the programme.

V. Overarching and cross-cutting factors

29. Some recurring and overarching cross-cutting factors have surfaced from the project reports, some of which have already been discussed. These factors will be useful when considering the continuation of the Trust Fund for Indigenous Issues, including its relation to the post-2015 development framework that is currently being formulated.

30. The fact that most of the projects were implemented by indigenous peoples' organizations contributed greatly to their cultural sensitivity. A number of projects also contributed to strengthening indigenous peoples' organizations and building awareness of indigenous peoples' rights and issues.

31. A second overarching factor is the impact of the projects in relation to the size of their budgets ($10,000 is not a large sum but it is a substantial amount of money in many countries and for many organizations). The overarching conclusion is that these small projects have significantly contributed to positive changes at the local level and that they can, if they are numerous enough, lead or contribute significantly to the achievement of the critical mass needed for making fundamental changes in the lives and for the rights of indigenous peoples.

32. Several projects have taken an innovative approach and resulted in effective solutions. The lessons learned can certainly be taken into account when formulating the next strategic steps for the small grants programme of the Trust Fund. Some projects could be showcased to provide project design guidance, as they illustrate the relationship between taking such approaches and achieving post-2015 development objectives and strategies. For example, effective indigenous peoples' empowerment contributes to ensuring inclusive development and reducing inequalities, indigenous women's empowerment contributes to inclusive social development, protecting biodiversity contributes to environmental sustainability and traditional conflict resolution methods are a means of pursuing peace and security.

33. A cross-cutting factor is the aspect of gender equality. Most projects consciously involved indigenous women and in many instances actually focused specifically on them. In that respect, the projects were largely successful in achieving or promoting gender balance. Project reports were not always clear, however, on the impact of the projects on gender equality. Project implementation strategies and project reports did not include descriptions of actions taken to reduce inequalities or change power relations. This is an aspect that might need to be strengthened in future project guidance and reporting formats.

34. It was considered that many projects, at least over three quarters of the total, were suitable for "scaling up", in other words could continue to be implemented beyond their original lifetime or be replicated in other regions.

35. The sustainability of the projects was considered to be average. Fewer than half of the projects showed clear indications of being sustainable (sustainability is understood as the capability and likeliness of the project and its results to continue beyond the project's lifetime), mainly because some projects did not provide information about next steps or on whether the activities would be continued. Other projects were clearly part of an ongoing process that was already in motion or was being planned by the implementing organization.

36. Taking ownership of the project was relatively important for the implementing organizations but less so for the beneficiaries. A factor influencing this ownership issue was the way in which the project was implemented: whether with the involvement of the beneficiaries or merely with a view to providing services for the beneficiaries. The latter approach was unavoidable in most cases, simply because of the intention of the project (e.g. improving the delivery of health or educational services, providing information and raising awareness). The degree to which ownership was taken could not always be assessed from the project reports.

37. Every action of every project could be seen as contributing to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples since all the projects focused on improving some aspect of indigenous peoples' lives and advocating their rights. At the same time, many projects consciously focused on making more-than-superficial changes in order to conform to the Declaration, as already discussed.

VI. Modus operandi of the small grants programme

38. The way in which the small grants programme functions (its modus operandi) was assessed and reviewed, including with regard to project cycle management, knowledge management and resource mobilization arrangements. Over the years, the programme has received increasingly more proposals but has been unable, due to a decrease in funding, to approve all of them (see the table below).

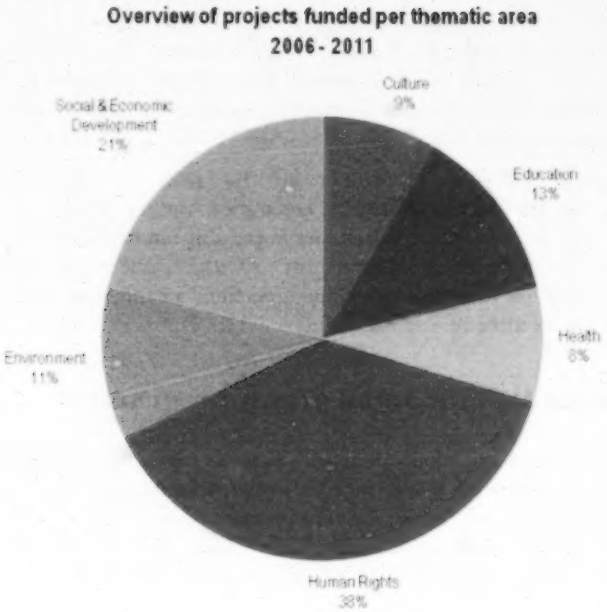
Number of projects received and approved, by year

Year	*Received*	*Approved*
2006	200	19
2007	78	20
2008	225	18
2009	120	18
2010	709	17
2011	684	15
2012[a]	1 044	

[a] Project proposals submitted in 2012 are yet to be reviewed by the advisory group for the small grants programme.

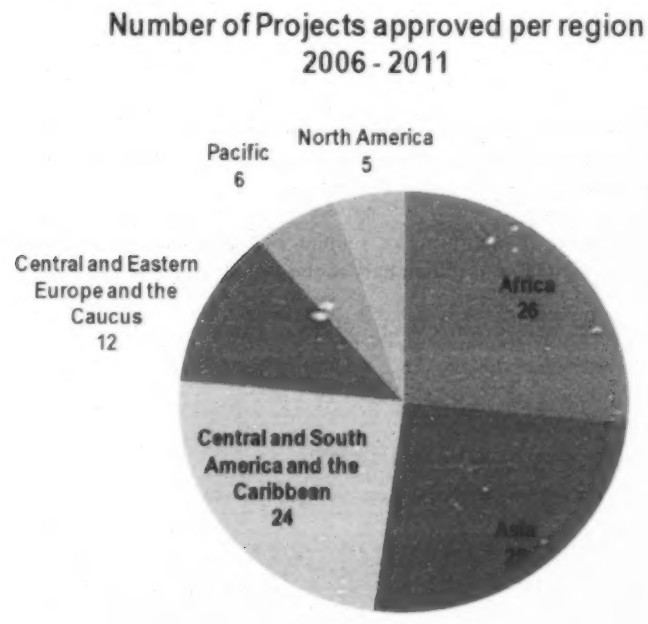
39. In terms of the main thematic areas, human rights and social and economic development were the focus in more than half of the projects (see figure I).

Figure I
Funded projects, by thematic area



40. As for the geographical distribution of the funded projects, Africa, Asia and Latin America and the Caribbean accounted for approximately one quarter of the total (figure II).

Figure II
Funded projects, by region



Criteria and requirements for awarding a small grant

41. The current administrative requirements with which project proposals must comply are the following:

(a) Projects must have an implementation period of no more than 12 months;

(b) Each project will receive a maximum of $10,000;

(c) The full project proposal is to be submitted in the predefined format;

(d) Applying organizations must have legal status (granted at the local, regional or national level);

(e) A copy of the applying organization's legal registration must be submitted;

(f) The applying organization must submit its by-laws;

(g) The applying organization must submit its organizational profile;

(h) The bank account used by the applying organization must be in the name of that organization;

(i) Certification of free, prior and informed consent from the indigenous peoples involved in the project must be provided; consent can be documented through a signed letter from the traditional leaders or representatives of the indigenous community that must include their name, position and contact details;

(j) The budget must be submitted in United States dollars;

(k) An activity plan (workplan of implementation) must be submitted.

42. These requirements are standard for many grants programmes; they are also straightforward, easy to understand and comply with United Nations regulations. The format for the proposal is also not complicated. However, specific attention could be given to the section on the expected results in the proposal format in order to evaluate projects more effectively.

43. To apply for funding through the small grants programme it might be necessary for indigenous peoples' organizations to obtain some form of legal status in accordance with national legislation. This may be a problem because some organizations might not have the capacity to apply for legal registration. Some other organizations might not wish to register as a legal body under national legislation because they have traditional structures, are governed by indigenous peoples' form of self-determination and therefore do not want to be subjected to national legislation that could, for example, dissolve such a legal entity. Nonetheless, the need for legal status is an understandable requirement of the United Nations, as it allows indigenous organizations to enter into a funding agreement with it.

44. Non-compliance with the requirement of having a bank account in the name of the applying organization has been reason for rejecting applications in a few cases. In some cases organizations did not have their own bank account because they had been using the account of an individual or another organization or because they had been subjected to undue monitoring or control of their finances and funding sources.

45. Lack of proof of the consent of the beneficiaries is another reason why some proposals could not be approved. In a few cases it was explained that the

beneficiaries were also involved in implementing the project. In many cases, however, no explanation was given for why the applying organization did not fulfil this requirement.

46. Overall, the requirements (substantive and in terms of documentation) are appropriate for this type of small grants programme. It would probably not be effective or efficient to add other stringent administrative requirements, such as those that would be applicable for the disbursement of large grants, and no further recommendations are made at this time for changes to the current requirements.

47. Over the years that the small grants programme has been operating, the eligibility and selection criteria have evolved and become more comprehensive.[1] If the administrative requirements set out in paragraph 41 above are fulfilled, project proposals are evaluated on the basis of the following questions (the substantive criteria):

(a) How well does the project fall within the thematic areas of the Trust Fund?

(b) Is sufficient information provided on the project?

(c) How systematic or logical is the connection between the objective of the project and the strategy and activities?

(d) Does the project demonstrate a participatory approach and evidence of free, prior and informed consent?

(e) Will the processes initiated by the project maintain a certain degree of vitality and remain in effect after the project period?

(f) To what degree does the budget reflect the actual activities to be implemented in the project, and are the two consistent?

48. Both sets of criteria (administrative and substantive) could be considered as objectives rather than as standard criteria for such small grants schemes, and do not need to be revised, although some slight changes to the wording might be needed for scoring purposes. Only the following three additional suggestions are made, to improve transparency and accountability:

(a) The evaluation criteria should be mentioned in the guidelines for applicants, so that it is clear upfront how the proposal will be evaluated;

(b) If information on organizational capacity and previous experience is not a criterion for selection, this should be made explicit and added to the substantive criteria;

(c) A scoring sheet with predefined maximum scores should be developed in order to maintain uniformity.

Knowledge management

49. A very important aspect of the small grants programme is the wealth of information that is generated through the projects — not just factual information but also information on inspirational, exemplary and recognizable situations that other

[1] See the most recent version of the application form at www.un.org/esa/socdev/unpfii/documents/Trust_fund_application_2013_EN.doc.

organizations, including indigenous organizations, can learn from or might enjoy reading about. Many situations are comparable even though they are in different parts of the world, and indigenous peoples and organizations could draw inspiration from the diverse projects financed through the programme. The process of reporting on the projects is currently a requirement being handled mechanically owing to the limited human resources available for the programme's management. If sufficient resources were available, consideration could be given to putting more effort into systematically extracting lessons learned from the reports and highlighting innovative examples (with the consent of those involved in the implementation of the project and of the beneficiaries, where applicable), for example by disseminating short project briefs or excerpts through social media platforms such as Facebook or e-mail newsletters.

50. It might also be necessary to increase synergies with other programmes, including small grants programmes, in particular those of United Nations entities such as the Global Environment Facility and the Indigenous Peoples Assistance Facility of the International Fund for Agricultural Development, with regard to not only content but also financing. Such synergies could consist of exchanging information on lessons learned at the project and programme levels (including from a programme management perspective) and of providing mutual referrals regarding project proposals.

51. Judging from the amount of proposals pouring in each year from unfamiliar places and across language regions, it is clear that the small grants programme is known globally. The contact details of those submitting project proposals, whether their project is approved or not, could be included in the database of contacts of the secretariat of the Permanent Forum for future information sharing, with the submitters' consent. To that end, a question could be added to the application form on whether applicants would want to receive information in the future. Such a question could be worded as follows: "Do you wish to receive information from the Permanent Forum on Indigenous Issues in the future?" The "Yes" box could be accompanied by a sentence clarifying that checking that box means that the Permanent Forum will include the organization's contact details in its contacts database for the purpose of sending information in the future on the activities of the Permanent Forum or related information.

Resource mobilization arrangements, including for fundraising

52. The Trust Fund on Indigenous Issues is financed through voluntary contributions; these normally come from Governments but the Trust Fund is permitted to receive contributions from other sources as well, including intergovernmental and non-governmental organizations, indigenous peoples' organizations, private institutions and individuals. Contributions to the Trust Fund have diminished over time, in terms of both the amount donated and the number of donors, reaching a low in 2011.

53. The need to intensify fundraising and attract more contributions has been discussed various times by the Bureau of the Permanent Forum, and efforts have been made to reach out to potential donors. In the light of the vastly increased number of applications for funds from the small grants programme and the significant impact of the funded projects, it is clear that the programme merits

evolved over the years to become a grant programme cycle that adheres to United Nations rules and procedures. The programme requires more dedicated staff or staff time and streamlined processes. It is therefore strongly recommended that a web-based database system be developed and implemented in order to facilitate the continuous management of the programme.

57. The process, from the call for applications to project closure, has evolved; it is now straightforward and not too complex for those submitting project proposals. With regard to improvements in transparency, it is necessary to make public all the criteria for approving a proposal at the stage of application so that maximum scores can be assigned to the respective selection criteria. In addition:

(a) The speed with which funds are transferred can and should be improved;

(b) Knowledge management, in particular with regard to extracting lessons learned and increasing synergies with other relevant grants programmes, including small grants programmes, can be improved;

(c) Intensified resource mobilization (fundraising for the Trust Fund) is a recognized and urgent necessity.

VII. Conclusions

58. The main conclusions to be drawn from the small grants programme of the Trust Fund are that the programme has effectively enabled indigenous peoples from around the world to positively contribute to achieving the goal and the objectives of the Second Decade, either by undertaking action themselves or by influencing policies or policy processes that affect them. The impact that the projects funded through the programme have had on policy has mostly been felt at the local level, where it matters the most, and can be considered substantial and significant given the very limited money and time available for implementing the projects. Increased awareness about indigenous peoples' rights and strengthened indigenous peoples' organizations are also positive changes that will contribute to reaching the critical mass that is necessary for upstream, sustained policy changes.

59. The sustainability of projects can be improved. Doing so will require project proponents to pay greater attention to the project design and more support from the donor community.

60. Valuable lessons have been learned through this programme; these lessons need to be highlighted and disseminated.

61. Indigenous peoples have an enormous need to have access to a programme of this kind, one that is effective in achieving its objectives. Resource mobilization (fundraising) is an urgent need, to enable the continuation and expansion of the small grants programme. Simultaneously, consideration needs to be given to strengthening synergies with other relevant funds and programmes.

62. The small grants programme could play an important role in relation to the post-2015 development framework. The Permanent Forum is the central United Nations body dealing with indigenous peoples' issues and can be instrumental in contributing to the emerging post-2015 framework and its implementation, specifically in its mandated areas: economic and social development, culture, the environment, education, health and human rights. Furthermore, all the projects

funded through the programme are related to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, which is part of the human rights' framework, and human rights are one of the fundamental principles of the development agenda. The Declaration also cuts across the four dimensions (inclusive social development, environmental sustainability, inclusive economic development and peace and security) and the three pillars (economic, social and environmental) of the sustainable development concept. Projects that will be funded through the small grants programme in the future can therefore substantially contribute to various enablers of development, as mentioned in current policy documents on the post-2015 agenda, particularly those related to governance, inclusiveness, the environment and equitable access to growth opportunities. In short, the small grants programme can be strategically important as one of the structured avenues for indigenous peoples to effectively participate and contribute to the post-2015 development framework.

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Indian Law Resource Center

I. Introduction

1. The Indian Law Resource Center[1] hereby submits information as a contribution to the note of the Secretariat on indigenous peoples' rights and safeguards in projects related to reducing emissions from deforestation and forest degradation (E/C.19/2013/7) and the note of the Secretariat on the review of World Bank operational policies (E/C.19/2013/15), both of which have been submitted to the Permanent Forum on Indigenous Issues at its twelfth session. In the present document, the Center identifies critical issues for indigenous peoples relating to ongoing safeguard policy processes at the World Bank and at institutions engaged in REDD-plus initiatives, which aim to reduce emissions from deforestation and forest degradation in developing countries.

2. Development and REDD-plus initiatives may harm or benefit indigenous peoples, depending on whether indigenous peoples' rights are meaningfully incorporated into relevant policies and practices. The mere existence of safeguard policies is insufficient. In order to prevent harm, safeguards must reflect a larger human rights-based approach.

* E/C.19/2013/1.

[1] The Indian Law Resource Center is a non-profit law and advocacy organization in consultative status with the Economic and Social Council that was established and is directed by American Indians (www.indianlaw.org).

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II. Safeguards and the World Bank

3. The World Bank is currently in the process of reviewing and reformulating its policies for managing social and environmental risks and impacts, including its safeguard policies on indigenous peoples, environmental assessments and involuntary resettlement.[2]

4. Although important for mitigating impacts, the safeguards are insufficient for preventing harm to indigenous peoples and their environments. In critical areas, the safeguards fall short of the standards in the United Nations Declaration on the Rights of Indigenous Peoples. In addition, affected communities and independent studies have confirmed the existence of significant problems with safeguard implementation.[3] Finally, the World Bank is increasingly exempting finance mechanisms from safeguard requirements.

5. In 2012, the World Bank initiated a review of 8 of its 10 safeguard policies, as well as of its policy on the use of borrower systems, which establishes when countries' own regulatory systems may be used in lieu of safeguards, with a view to developing a new integrated framework. The review is unprecedented in scope, involving a rethinking of the Bank's overall approach to social and environmental protection.

6. The review, scheduled to last until June 2014, could have a profound impact on indigenous peoples. Because the safeguards have also been adopted by other multilateral development banks, national development agencies, private financial institutions and climate institutions, they have the potential to set the global standard for development and climate finance, not only to determine the effects of projects financed by the World Bank.

III. Safeguards and REDD-plus initiatives

7. Because REDD-plus initiatives deal directly with indigenous peoples' ownership of and access to lands and resources, effective REDD-plus safeguards are critical.[4] REDD-plus safeguard policies currently being developed by institutions such as the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme), the World Bank's Forest Carbon Partnership Facility, conservation organizations and bilateral arrangements vary greatly. While REDD-plus institutions

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[2] For information on the safeguard policies of the World Bank, see http://go.worldbank.org/WTA1ODE7T0; for information provided by the Indian Law Resource Center on multilateral development banks, see www.indianlaw.org/mdb.

[3] "Implementation of the World Bank's indigenous peoples policy: a learning review (FY 2006-2008)", Operations Policy and Country Services Working Paper (World Bank, August 2011). Available from http://siteresources.worldbank.org/INTSAFEPOL/Resources/Indigenous_peoples_review_august_2011.pdf. See also the findings of the Inspection Panel of the World Bank (http://go.worldbank.org/7RCPYOF0C0).

[4] See Leonardo A. Crippa and Gretchen Gordon, *International Law Principles for Redd+: the Rights of Indigenous Peoples and the Legal Obligations of REDD+ Actors* (Washington, D.C., Indian Law Resource Center, 2012). Available from http://www.indianlaw.org/sites/default/files/Indian%20Law%20Resource%20Center_REDD+%20Principles.pdf.

are increasingly acknowledging indigenous peoples' rights, they often fail to incorporate those rights into their policies in a meaningful way.

IV. Human rights obligations

8. States have the international legal obligation to respect human rights and to prevent and redress human rights violations, including when acting collectively through entities like multilateral development banks, the UN-REDD Programme or the Global Environment Facility. International intergovernmental organizations implementing development or REDD-plus projects must respect human rights and avoid complicity in host countries' failures to comply with international obligations.[4]

9. The United Nations Declaration on the Rights of Indigenous Peoples provides that the specialized agencies of the United Nations (e.g. the World Bank) and other intergovernmental organizations shall contribute to the full realization of the rights of the Declaration (article 41). In addition, the Conference of the Parties to the United Nations Framework Convention on Climate Change agreed, in its decision 1/CP.16 (FCCC/CP/2010/7/Add.1), that human rights should be respected in all climate change activities and established safeguards for REDD-plus activities; it also decided that activities should be consistent with the objectives of international agreements and respect the rights and knowledge of indigenous peoples. Many REDD-plus entities, including the UN-REDD Programme, the Forest Carbon Partnership Facility and the Global Environment Facility, have internal policies requiring respect for indigenous peoples' rights and compliance with international obligations.

V. A human rights-based approach

10. Several REDD-plus institutions, including the UN-REDD Programme and the Forest Carbon Partnership Facility, have guidelines on engaging with indigenous peoples. Both institutions state as a matter of policy that their guidelines are consistent with the obligations of the Conference of the Parties to the United Nations Framework Convention on Climate Change to respect indigenous peoples' rights. While this is laudable, merely claiming that their policies are coherent does not make them so. The Facility, for instance, erroneously states that its standard of "broad community support" is essentially equivalent to free, prior and informed consent. Even when policy statements follow international human rights standards, such policies cannot be considered adequately protective of human rights if they are not binding and enforceable.

11. While development and REDD-plus institutions, including the UN-REDD Programme, increasingly acknowledge that they have human rights obligations, the World Bank has been reluctant to do so. The Bank maintains a double standard because it prohibits financing for projects that would contravene a borrowing country's obligations under international environmental agreements but not its obligations under human rights treaties (see the Bank's operational policy on environmental assessments). Bank safeguards, moreover, fall short in key human rights areas, including self-determination, the right to lands, territories and resources, and free, previous and informed consent, as explained below.

VI. Self-determination and self-government

12. The United Nations Declaration on the Rights of Indigenous Peoples recognizes indigenous peoples' right to self-determination (article 3) and self-government (article 4). It also affirms their right to maintain and develop their political, economic and social systems or institutions (articles 5 and 20), to make decisions regarding their lands and resources (articles 26 and 32) and to receive just and fair redress if deprived of their means of subsistence (article 20). The Declaration also recognizes that indigenous peoples have the right to be actively involved in developing and determining economic and social programmes affecting them, and as far as possible, to administer such programmes through their own institutions (article 23).

13. Whereas States are increasingly recognizing indigenous peoples' governments, the World Bank and most REDD-plus institutions do not. While indigenous peoples are sometimes consulted on mitigation and benefit plans, in most cases they are not provided with a way to articulate or administer their own development or REDD-plus plans in line with their priorities. Projects fail to respect indigenous peoples' systems of decision-making and governance when they impose external consultation processes and resource management strategies.

VII. Lands, territories and resources

14. The United Nations Declaration on the Rights of Indigenous Peoples recognizes indigenous peoples' right to traditional ownership, including collective ownership, and their right to own, use, develop and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired (article 26). The Declaration also lays out the duty of States to recognize and protect such lands, territories, resources and environments (articles 26, 27 and 29), and provides for redress for lands, territories and resources taken, used or damaged without free, prior and informed consent (article 28).

15. The World Bank's operational policy on indigenous peoples fails to require recognition of indigenous peoples' full collective ownership of their lands, territories and resources. Instead, borrowers are required to secure legal recognition of indigenous peoples' lands only when a project involves land acquisition or titling. The policy allows the Bank and borrowers to reduce collective ownership rights to mere use rights, and to divide communal lands. Recognition of land and resource rights has been found to be the most poorly implemented aspect of the policy.[3] Similarly, while most REDD-plus policies recognize the importance of securing land tenure, the vast majority fail to require recognition of indigenous peoples' full ownership rights.

VIII. Free, prior and informed consent

16. The United Nations Declaration on the Rights of Indigenous Peoples establishes free, prior and informed consent as a key legal standard governing projects affecting indigenous communities and their environment. Moreover, any

project that has a substantial effect on indigenous peoples' lands, territories and resources implicates article 26 of the Declaration, which provides that indigenous peoples have the right to govern and manage their lands, territories and resources.

17. The World Bank's operational policy on indigenous peoples does not require free, prior and informed consent as a precondition for financing activities on or involving indigenous peoples' lands or resources. Instead, it utilizes a standard of "free, prior, and informed consultation" resulting in "broad community support". This standard imposes external processes and measurements of support or opposition, undermining indigenous peoples' right to make their own development decisions and to establish and maintain their own decision-making institutions. Additionally, the policy neither provides indigenous peoples with the opportunity to withdraw consent in the event of changed circumstances nor does it require independent verification.

18. Although many REDD-plus safeguards have some sort of requirement regarding free, prior and informed consent, in many cases the actual protocols are ineffective and fail to guarantee the right to give or withhold consent (they do not provide adequate information to ensure that the consent given is in fact informed) and to ensure that indigenous peoples determine decision-making and consent processes.

IX. Recommendations

19. The World Bank and the REDD-plus institutions should respect the rights of indigenous peoples by carrying out the following actions:

(a) Prohibit financing for activities that violate or contribute to human rights violations, including any project that may affect indigenous peoples in voluntary isolation;

(b) Ensure that policies meet minimum international human rights standards;

(c) Where a host country's laws fail to meet minimum international human rights standards, ensure that projects are not implemented without adequate measures guaranteeing protections consistent with such standards;

(d) Establish mechanisms that allow indigenous peoples, through their own decision-making and governance systems, to develop and freely make decisions about project proposals, including with regard to their modification and rejection;

(e) Finance activities that strengthen the autonomy and the capacity of indigenous peoples to manage their territories, and ensure that indigenous peoples can design and manage projects involving their lands or resources;

(f) Adopt as a governing requirement the legal recognition of indigenous peoples' right to full collective ownership of their lands and natural resources, including lands acquired by means other than traditional or customary occupation or use, and ensure that benefit-sharing with indigenous peoples is consistent with ownership rights;

(g) If indigenous peoples' land, territories and resource rights are violated, ensure that compensation takes the form of lands, territories and resources equal in quality, size and legal status or other redress consistent with international law;

(h) Prohibit the involuntary resettlement of indigenous peoples and the placement of involuntary restrictions on livelihood activities or on access to natural resources;

(i) Ensure that project proponents obtain the free, prior and informed consent of indigenous peoples, with third party verification, for any projects on or involving indigenous peoples' lands, territories or resources, or that may substantially affect their lands, territories or resources, or their human rights.

(j) Ensure that protocols on free, prior and informed consent include an agreement between indigenous communities and the State identifying due redress measures and withdrawal processes;

(k) Require the use of human rights impact assessments to identify rights-holders and human rights risks, and prevent and redress project-related rights violations.

20. The Permanent Forum should carry out the following actions:

(a) Promote the reform of international finance policies and practices to bring development banks and REDD-plus institutions into compliance with the Declaration, including by providing technical assistance, submitting expert recommendations and actively engaging in the World Bank safeguards review;

(b) Help ensure that consultation processes at the World Bank and REDD-plus institutions are representative and allow for indigenous peoples' full and effective participation.